

# ***NORTH CAROLINA REGISTER***

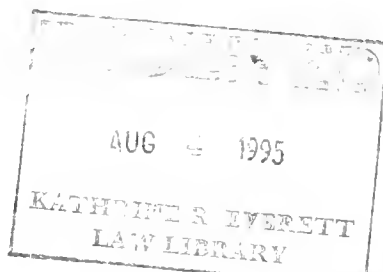
**VOLUME 10 • ISSUE 9 • Pages 716 - 822  
August 1, 1995**

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Environment, Health, and Natural Resources  
Human Resources  
Justice  
Refrigeration Examiners, Board of  
Tax Review Board  
List of Rules Codified  
RRC Objections  
Contested Case Decisions

## **PUBLISHED BY**

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## INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

### **NORTH CAROLINA REGISTER**

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the *Register*. The *Register* will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and twenty dollars (\$120.00) for 24 issues. Individual issues may be purchased for ten dollars (\$10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447.

### **ADOPTION, AMENDMENT, AND REPEAL OF RULES**

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the *North Carolina Administrative Code* (NCAC).

Proposed action on rules may be withdrawn by the promulgating

agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

### **TEMPORARY RULES**

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

### **NORTH CAROLINA ADMINISTRATIVE CODE**

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards. The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.
- (2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

### **CITATION TO THE NORTH CAROLINA REGISTER**

The *North Carolina Register* is cited by volume, issue, page number and date. 10:01 NCR 1-67, April 3, 1995 refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, PO Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, FAX (919) 733-3462.

# **NORTH CAROLINA REGISTER**

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Pages 716 - 822**

**August 1, 1995**

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filed through July 18, 1995.

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# NORTH CAROLINA REGISTER

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(November 1994 - September 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95
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9:22	02/15/95	01/25/95	02/01/95	03/02/95	03/17/95	03/20/95	05/01/95
9:23	03/01/95	02/08/95	02/15/95	03/16/95	03/31/95	04/20/95	06/01/95
9:24	03/15/95	02/22/95	03/01/95	03/30/95	04/17/95	04/20/95	06/01/95
10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
10:2	04/17/95	03/24/95	03/31/95	05/02/95	05/17/95	05/22/95	07/01/95
10:3	05/01/95	04/07/95	04/17/95	05/16/95	05/31/95	06/20/95	08/01/95
10:4	05/15/95	04/24/95	05/01/95	05/30/95	06/14/95	06/20/95	08/01/95
10:5	06/01/95	05/10/95	05/17/95	06/16/95	07/03/95	07/20/95	09/01/95
10:6	06/15/95	05/24/95	06/01/95	06/30/95	07/17/95	07/20/95	09/01/95
10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
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10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95

*This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.*

*\* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

*\*\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st day of the next calendar month.*

*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

## STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

## COUNTY OF WAKE

## IN THE MATTER OF:

The Proposed Assessment of Controlled Substance Excise  
tax for possession of non-tax-paid Controlled Substance  
on August 4, 1992 by the Secretary of Revenue  
against John B. Melville, Jr. and David J. Collins

ADMINISTRATIVE  
DECISION NUMBER: 300

**THIS MATTER** was heard before the Tax Review Board on April 11, 1995 in the City of Raleigh, Wake County, North Carolina in the office of the State Treasurer. It involves the Petitions of John B. Melville, Jr. and David J. Collins (hereinafter "Taxpayers") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services (hereinafter "Assistant Secretary") entered on January 14, 1994 sustaining a proposed assessment of controlled substance excise tax for possession of non-tax-paid controlled substance.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with Hugh A. Wells, Chairman Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law participating.

Walter W. Vatcher and Charles K. Medlin, Jr., Attorneys at Law, appeared on behalf of the Taxpayers; Christopher E. Allen, Assistant Attorney General, appeared on behalf of the Department of Revenue.

On administrative review to this Board, the Taxpayers argued that the Assistant Secretary erred in sustaining the assessment of the controlled substance tax in the sum of \$79,380.00, interest in the sum of \$89.81 and penalty in the sum of \$13,404.00. The Taxpayers also argued that the statute under which the tax is assessed is unconstitutional.

The Board's review of the facts show that the Taxpayers arranged to purchase fifty (50) pounds of marijuana from a State Bureau of Investigation informant. On August 4, 1992, the informant delivered the marijuana to a site designated by the Taxpayers. The informant then collected payment for the marijuana from the Taxpayers at Melville's residence. On August 4, 1992 the Taxpayers drove to the designated deliver site where they were arrested. Notices of Assessment were prepared and served on the Taxpayers pursuant to the provisions of N.C.G.S. §105-241.1.

N.C.G.S. §105-113.105 et. seq. provides for the levy of an excise tax on persons (dealers) who possess a non-tax-paid controlled substance. The tax is due within 48 hours after the dealer acquires a non-tax-paid controlled substance. The proposed assessment of the excise tax is presumed to be correct pursuant to N.C.G.S. §105-241.1(a), thus the burden is on the Taxpayers to overcome this presumption and rebut the assessment.

The purpose of this Board is to provide administrative review to Taxpayers from the Secretary of Revenue's decision sustaining the assessment of tax or additional tax pursuant to North Carolina Revenue Laws. The Board after review of the factual situation and the application of the statute to those facts renders its decision. N.C.G.S. § 105-241.2 provides that the Board's decision shall confirm, modify, reverse, reduce, or increase the assessment or decision of the Secretary. N.C.G.S. § 105-241.2 does not give this administrative board the authority or jurisdiction to rule on the constitutionality of a statute. *Great Am. Ins. Co. v. Gold*, 254 N.C. 168, 118 S.E.2d. 792 (1961).

THE BOARD HAVING REVIEWED THE PETITIONS AND RECORD MADE IN THE PROCEEDING AND HAVING CAREFULLY CONSIDERED THE MATTERS OF RECORD AND THE ARGUMENTS PRESENTED RENDERED THE FOLLOWING DECISION: that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record; that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact; and that the decision by the Assistant Secretary sustaining the tax assessment was fully supported by the conclusions of law. From the record, there was a reasonable basis to presume that the Taxpayers were in possession of the controlled substance. Pursuant to N.C.G.S. §105-241.1(a), the proposed assessment of the excise tax is presumed to be correct. The Taxpayers failed to produce evidence to overcome the presumption and rebut the assessment.

IT IS THEREFORE ORDERED, that the Board confirms the Assistant Secretary's final decision as to the assessment of the tax in the amount of \$79,380.00 but reverses the final decision as to penalty imposed against the Taxpayers and modifies the assessment of the penalty to be applicable only to the net amount of the tax assessed remaining unpaid after the application of any amount received by the garnishment filed by the Department of Revenue.

Since the Tax Review Board is not empowered to pass upon the constitutionality of a statute, or its application to a particular assessment or taxpayer, the Taxpayers' argument as to the constitutionality of the statute was not properly before this forum.

Entered this the 10th day of July, 1995.

#### TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
Hugh Wells, Chairman  
Utilities Commission

\_\_\_\_\_  
Jeff D. Batts, Member

## STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

## COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Controlled Substance Excise  
tax for possession of non-tax-paid Controlled Substance  
on March 4, 1992 by the Secretary of Revenue against  
Clinton Ray Price

ADMINISTRATIVE  
DECISION NUMBER: 301

**THIS MATTER** was heard before the Tax Review Board on June 7, 1995 in the City of Raleigh, Wake County, North Carolina in the office of the State Treasurer. It involves the Petition of Clinton Ray Price (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services (hereinafter "Assistant Secretary") entered on June 22, 1994 sustaining a proposed assessment of controlled substance excise tax for possession of non-tax-paid controlled substance.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with Hugh A. Wells, Chairman Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law participating.

David B. Freedman, Attorney at Law, appeared on behalf of the Taxpayer; Christopher E. Allen, Assistant Attorney General, appeared on behalf of the Department of Revenue.

On administrative review to this Board, the Taxpayer argued that the Assistant Secretary erred in sustaining the assessment of the controlled substance excise tax. The Taxpayer also argued that the statute under which the tax is assessed is unconstitutional.

N.C.G.S. §105-113.105 et. seq. provides for the levy of an excise tax on persons (dealers) who possess a non-tax-paid controlled substance. The tax is due within 48 hours after the dealer acquires a non-tax-paid controlled substance. The proposed assessment of the excise tax is presumed to be correct pursuant to N.C.G.S. §105-241.1(a), thus the burden is on the Taxpayer to overcome this presumption and rebut the assessment.

The purpose of this Board is to provide administrative review to Taxpayers from the Secretary of Revenue's decision sustaining the assessment of tax or additional tax pursuant to North Carolina Revenue Laws. The Board after review of the factual situation and the application of the statute to those facts renders its decision. N.C.G.S. § 105-241.2 provides that the Board's decision shall confirm, modify, reverse, reduce, or increase the assessment or decision of the Secretary. N.C.G.S. § 105-241.2 does not give this administrative board the authority or jurisdiction to rule on the constitutionality of a statute. *Great Am. Ins. Co. v. Gold*, 254 N.C. 168, 118 S.E.2d. 792 (1961).

**THE BOARD HAVING REVIEWED THE PETITION AND RECORD MADE IN THIS PROCEEDING AND HAVING CAREFULLY CONSIDERED THE MATTERS OF RECORD AND THE ARGUMENTS PRESENTED RENDERED THE FOLLOWING DECISION:** that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record; that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact; and that the decision by the Assistant Secretary sustaining the tax assessment was fully supported by the conclusions of law. From the record, there was a reasonable basis to presume that the Taxpayer was in possession of the controlled substance. Pursuant to N.C.G.S. §105-241.1(a), the proposed assessment of the excise tax is presumed to be correct. There was no evidence in the record to rebut that presumption.

**IT IS THEREFORE ORDERED**, that final decision of the Assistant Secretary sustaining the assessment is **CONFIRMED**.

Since the Tax Review Board is not empowered to pass upon the constitutionality of a statute, or its application to a particular assessment or taxpayer, the Taxpayer's argument as to the constitutionality of the statute was not properly before this forum.

Entered this the 11th day of July, 1995.

**TAX REVIEW BOARD**

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Harlan E. Boyles, Chairman  
State Treasurer

---

Hugh Wells, Chairman  
Utilities Commission

---

Jeff D. Batts, Member



STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF: )  
The Proposed Assessment of Controlled Substance Excise )  
tax for possession of non-tax-paid Controlled Substance )  
on May 6, 1993 by the Secretary of Revenue against )  
Bill Hall )  
)

ADMINISTRATIVE  
DECISION NUMBER: 302

**THIS MATTER** was heard before the Tax Review Board on June 7, 1995 in the City of Raleigh, Wake County, North Carolina in the office of the State Treasurer. It involves the Petition of Bill Hall (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services (hereinafter "Assistant Secretary") entered on February 1, 1995 sustaining a proposed assessment of controlled substance excise tax for possession of non-tax-paid controlled substance.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with Hugh A. Wells, Chairman Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law participating.

The Taxpayer and his attorney of record did not appear at the hearing; Christopher E. Allen, Assistant Attorney General, appeared on behalf of the Department of Revenue.

On administrative review to this Board, the Taxpayer argued that the Assistant Secretary erred in sustaining the assessment of the controlled substance excise tax because he denied possession of the controlled substance. Taxpayer also argued that the statute under which the tax is assessed is unconstitutional.

N.C.G.S. §105-113.105 et. seq. provides for the levy of an excise tax on persons (dealers) who possess a non-tax-paid controlled substance. The tax is due within 48 hours after the dealer acquires a non-tax-paid controlled substance. The proposed assessment of the excise tax is presumed to be correct pursuant to N.C.G.S. §105-241.1(a), thus the burden is on the Taxpayer to overcome this presumption and rebut the assessment.

The purpose of this Board is to provide administrative review to Taxpayers from the Secretary of Revenue's decision sustaining the assessment of tax or additional tax pursuant to North Carolina Revenue Laws. The Board after review of the factual situation and the application of the statute to those facts renders its decision. N.C.G.S. § 105-241.2 provides that the Board's decision shall confirm, modify, reverse, reduce, or increase the assessment or decision of the Secretary. N.C.G.S. § 105-241.2 does not give this administrative board the authority or jurisdiction to rule on the constitutionality of a statute. *Great Am. Ins. Co. v. Gold*, 254 N.C. 168, 118 S.E.2d. 792 (1961).

**THE BOARD HAVING REVIEWED THE PETITION AND RECORD MADE IN THIS PROCEEDING AND HAVING CAREFULLY CONSIDERED THE MATTERS OF RECORD AND THE ARGUMENTS PRESENTED RENDERED THE FOLLOWING DECISION:** that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record; that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact; and that the decision by the Assistant Secretary sustaining the tax assessment was fully supported by the conclusions of law. From the record, there was a reasonable basis to presume that the Taxpayer was in possession of the controlled substance. Pursuant to N.C.G.S. §105-241.1(a), the proposed assessment of the excise tax is presumed to be correct. There was no evidence in the record to rebut that presumption.

**IT IS THEREFORE ORDERED**, that final decision of the Assistant Secretary sustaining the assessment is **CONFIRMED**.

Since the Tax Review Board is not empowered to pass upon the constitutionality of a statute, or its application to a particular assessment or taxpayer, the Taxpayer's argument as to the constitutionality of the statute was not properly before this forum.

Entered this the 11th day of July, 1995.

**TAX REVIEW BOARD**

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Harlan E. Boyles, Chairman  
State Treasurer

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Hugh Wells, Chairman  
Utilities Commission

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Jeff D. Batts, Member

**TITLE 10 - DEPARTMENT OF HUMAN  
RESOURCES**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rules cited as 10 NCAC 39D .0302 and .0303.

**Proposed Effective Date:** November 1, 1995.

**A Public Hearing** will be conducted at 10:00 a.m. on September 6, 1995 at the Albemarle Building, Room 943-2, 325 N. Salisbury Street, Raleigh, NC 27603.

**Reason for Proposed Action:**

**10 NCAC 39D .0302** - to eliminate the nine month limit on the duration of Work Experience participation and will allow greater flexibility in placing participants in Work Experience.

**10 NCAC 39D .0303** - to allow the State more flexibility in meeting education and training needs of program participants in Post-secondary Education and training.

**Comment Procedures:** Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these rules by calling or writing to Sharnese Ransome, Special Assistant, NC Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603, 919/733-3055.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of local government or state funds.

**CHAPTER 39 - EMPLOYMENT PROGRAMS**

**SUBCHAPTER 39D - JOB OPPORTUNITIES AND  
BASIC SKILLS TRAINING (JOBS) PROGRAM**

**SECTION .0300 - JOBS PROGRAM COMPONENTS  
AND ACTIVITIES**

**.0302 WORK EXPERIENCE**

~~(a) Work experience participation shall not exceed nine months during any period of AFDC eligibility.~~

~~(b) A participant who is a parent in any family eligible for AFDC by reason of the unemployment of the parent who is the principle wage earner shall not be subject to the time limitations described in Paragraph (a) of this Rule.~~

~~(c) A JOBS participant may volunteer to participate in work experience for more than the maximum number of hours as defined in 45 CFR 250.63. 45 CFR 250.63 is hereby incorporated by reference including all subsequent amendments and editions. Copies of this Rule may be obtained by contacting the North Carolina Division of Social Services, Employment Programs Section, 325 North Salisbury Street, Raleigh, North Carolina, 27603, 919/733-~~

2873.

Authority G.S. 143B-153; 42 U.S.C. 682(a)(2).

**.0303 POST-SECONDARY EDUCATION**

(a) The criteria for determining when post-secondary education, as defined in 45 CFR 250.1 and 45 CFR 250.46, is appropriate for JOBS participants shall be:

~~(1) A participant has earned a high school diploma or its equivalent;~~

(2) (1) The program of study offered at the post-secondary institution is directly related to the participant's employment goal as defined in the JOBS employability plan; and

~~(3) (2) The determination of appropriateness is made by an educational assessment.~~

~~(b) Payment for tuition and fees shall be no more than the tuition and fee rates for the local or regional state supported institution. 45 CFR 250.1 and 45 CFR 250.46 are hereby incorporated by reference including all subsequent amendments and editions. Copies of this Rule may be obtained by contacting the North Carolina Division of Social Services, Employment Programs Section, 325 North Salisbury Street, Raleigh, North Carolina, 27603, 919/733-2873.~~

Authority G.S. 143B-153; 42 U.S.C. 682(a)(2).

\*\*\*\*\*

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rule cited as 10 NCAC 42H .0911.

**Proposed Effective Date:** December 1, 1995.

**A Public Hearing** will be conducted at 10:00 a.m. on September 6, 1995 at the Albemarle Building, Room 943-2, 325 N. Salisbury Street, Raleigh, NC 27603.

**Reason for Proposed Action:** To clarify the original intent of the rule, which is to allow agencies to decide whether or not adult client relatives, as defined in the rule, may be employed as in-home aides. In addition, the rule is being proposed for amendment to give agencies the same flexibility in making a decision about hiring a client relative to serve as a child's in-home aide.

**Comment Procedures:** Comments may be presented anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of this rule by calling or writing to Sharnese Ransome, Special Assistant, NC Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603, 919/733-3055.

**Fiscal Note:** This Rule does not affect the expenditures or

revenues of local government or state funds.

## CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

### SUBCHAPTER 42H - IN-HOME AIDE SERVICES

#### SECTION .0900 - PROGRAM REQUIREMENTS

##### .0911 SELECTION OF AIDES

~~(a) The following persons shall be allowed to serve as in-home aides for adults:~~

~~(1) Non-relatives who are 18 years of age or older who are competent to perform the tasks needed by the client.~~

~~(2) The client's relatives, who for this purpose are parent, spouse, child or sibling, who are 18 years of age or older and who give up employment or the opportunity for employment in order to perform the service and who are competent to perform the tasks needed by the client.~~

~~(b) Non-relatives who are 18 years of age or older who are competent to perform the tasks needed by the client shall be allowed to serve as in-home aides for children and their families.~~

Agencies providing in-home aide services must have a written policy regarding who may serve as in-home aides. The written policy shall include, at a minimum, the following information about who may serve as in-home aides:

(1) aides shall be 18 years of age or older or emancipated minors; and

(2) aides shall be persons who have demonstrated competency to perform the tasks needed by the client; and

(3) whether or not the agency allows the hiring of relatives to serve as a client's in-home aide. If the agency allows a relative to be a client's in-home aide, the policy must also contain the following requirements:

(a) that the relative of the client for this purpose is either a parent, spouse, child, or sibling of the client, including step relations of the client for any of those; and

(b) that the relative must have given up employment or the opportunity for employment in order to perform the tasks needed by the client; and

(4) any other hiring guidelines established by the agency.

Statutory Authority G.S. 143B-153.

## TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Sheriffs' Education and Training Standards Commission intends to amend rules

cited as 12 NCAC 10B .0102 - .0103, .0105, .0204, .0301, .0304, .0307, .0401 - .0403, .0405, .0407 - .0409, .0502 - .0503, .0505, .0601 - .0607, .0702 - .0706, .0801 - .0803, .0901, .0903 - .0906, .0908 - .0912, .1004 - .1005, .1201 - .1205.

Proposed Effective Date: January 1, 1996.

A Public Hearing will be conducted at 9:00 a.m. on September 13, 1995 at the Rowan-Cabarrus Community College, Rooms 302A and 302B, Salisbury, North Carolina 28145-1595.

Reason for Proposed Action: To amend rules in compliance with certain statutory changes or in the discretion of the Sheriffs' Commission. To make certain technical changes as requested by the Rules Review Commission last year.

Comment Procedures: Copies of the proposed rule changes are available from the North Carolina Department of Justice - Sheriffs' Standards Division, PO Box 629, 104 Fayetteville St. Mall, Raleigh, North Carolina 27602-0629, (919) 733-9236. Written comments will be accepted until the close of the business day on Monday, September 8, 1995 and should be addressed to Joan Neuner, Director at the above address. Public comment is also welcome during the Public Rule-Making Hearing on September 13, 1995 beginning at 9:00 a.m. at Rowan-Cabarrus Community College, Rooms 302A&B in Salisbury, North Carolina.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

## CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

### SUBCHAPTER 10B - NC SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

#### SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

##### .0102 PURPOSE

The purpose of the commission is not only to continually raise the level of competence within the sheriffs' departments, but to recognize and deal with the particular education and training needs of sheriffs and their deputies and jailers detention officers by:

- (1) Establishing minimum standards for employment and retention;
- (2) Establishing minimum standards for education and training;
- (3) Promoting the planning and development of systematic career development programs by providing and encouraging advanced or specialized training, education and certification;

- (4) Planning and promoting the development and improvement of a comprehensive system of education and training in the administration of law enforcement;
- (5) Conducting and initiating research and planning by public and private agencies, designed to improve education and training in the administration of law enforcement;
- (6) Studying the recruitment, selection, education and training of sheriffs' department personnel and recommending improvements in such methods; and
- (7) Maintaining liaison among local, state and federal agencies with respect to North Carolina Sheriffs' Education and Training.

Statutory Authority G.S. 17E-4.

### .0103 DEFINITIONS

In addition to the definitions set forth in G.S. 17E-2, the following definitions apply throughout this Chapter, unless the context clearly requires otherwise:

- (1) "Appointment" as it applies to a deputy sheriff means the date the deputy's oath of office is administered, and as it applies to a jailer detention officer means either the date the jailer's detention officer's oath of office was administered, if applicable, or the jailer's detention officer's actual date of employment as reported on the Report of Appointment (Form F-4) by the employing agency, whichever is earlier.
- (2) "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
  - (a) a plea of guilty;
  - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
  - (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) "Department Head" means the chief administrator of any criminal justice agency. Department head includes the sheriff or a designee formally appointed in writing by the Department head.
- (4) "Director" means the Director of the Sheriffs' Standards Division of the North Carolina Department of Justice.
- (5) "Division" means the Sheriffs' Standards Division.
- (6) "High School" means a school accredited as a high school by:
  - (a) the Department or Board of Education of the state in which the high school is located; or
  - (b) the recognized regional accrediting body; or
  - (c) the state university of the state in which the high school is located.
- (7) "Enrolled" means that an individual is currently actively participating in an on-going formal pre-

- (8) "Essential Job Functions" means those tasks deemed by the agency head to be necessary for the proper performance of a justice officer.
- (9) "Lateral Transfer" means certification of a justice officer when the applicant for certification has previously held general or grandfather certification as a justice officer or a criminal justice officer as defined in G.S. 17C-2(c), excluding state correctional officers, state probation/parole officers, and state youth services officers, provided the applicant has been separated from a sworn law enforcement position for no more than one year, or has had no break in service.
- (10) "Misdemeanor" means those criminal offenses not classified by the North Carolina General Statutes, the United States Code, the common law, or the courts as felonies. Misdemeanor offenses are classified by the Commission as follows:
  - (a) "Class A Misdemeanor" means an act committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state which is not classified as a Class B Misdemeanor pursuant to Sub-item (10)(b) of this Rule. Class A Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving which is expressly included herein as a Class A Misdemeanor, if the offender could have been sentenced for a term of not more than six months. Also specifically included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. Class A Misdemeanor shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance or criminal statute, of this state for which the maximum punishment allow-

- (b) able for the designated offense included imprisonment for a term of not more than six months. "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of the publication may be obtained from the North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602. There is no cost per manual at the time of adoption of this Rule. Class B Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor does expressly include, either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, and driving while license permanently revoked or permanently suspended. "Class B Misdemeanor" shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, or criminal statute, or criminal traffic code of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years. Specifically excluded from the grouping of "Class B misdemeanors" committed or omitted in North Carolina prior to October 1, 1994 are motor vehicle or traffic offenses designated as being misdemeanors under Chapter 20 (motor vehicles) of the General Statutes of North Carolina, with the following exceptions: "Class B misdemeanors" committed or omitted in North Carolina prior to October 1, 1994 expressly include, either first or subsequent offenses of G.S. 20-138(a) or (b), G.S. 20-166 (duty to stop

- in the event of an accident), G.S. 20-138.1 (impaired driving) if the defendant was sentenced under punishment level one [G.S. 20-179g] or punishment level two [G.S. 20-179(h)] for the offense, and shall also include a violation of G.S. 20-28(b) [driving while license permanently revoked or suspended].
- (11) "Felony" means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred.
- (12) "Dual Certification" means that a justice officer holds probationary, general, or grandfather certification as both a deputy sheriff and a jailer detention officer with the same employing agency.
- (13) "Jailer" "Detention Officer" means any person performing responsibilities, either on a full-time, part-time, permanent or temporary basis, which include but are not limited to the control, care, and supervision of any inmates incarcerated in a county jail or other confinement facility under the direct supervision and management of the sheriff. "Detention Officer" shall also mean the administrator and the other custodial personnel of district confinement facilities as defined in G.S. 153A-219.
- (14) "Deputy Sheriff" means any person who has been duly appointed and sworn by the sheriff and who is authorized to exercise the powers of arrest in accordance with the laws of North Carolina.
- (15) "Commission" as it pertains to criminal offenses shall mean a finding by the North Carolina Sheriffs' Education and Training Standards Commission or an administrative body, pursuant to the provisions of Chapter 150B of the North Carolina General Statutes, that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- (16) "Sworn Law Enforcement Position" means a position with a criminal justice agency of the United States, any state, or a political subdivision of any state which, by law, has general power of arrest held by a person who has successfully completed the North Carolina Basic Law Enforcement Training Course.

Statutory Authority G.S. 17E-7.

#### .0105 ADMINISTRATIVE HEARING PROCEDURES

- (a) Administrative hearings in contested cases conducted by the Commission or an administrative law judge (as authorized in G.S. 150B-40) shall be governed by:
- (1) procedures set out in Article 3A of G.S. Chapter 150B;
  - (2) insofar as relevant, the Rules of Civil Procedure as contained in G.S. 1A-1;
  - (3) insofar as relevant, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the

Rules Volume of the North Carolina General Statutes.

(b) The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in Title 26, Chapter 3 of the North Carolina Administrative Code are hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced materials as provided by G.S. 150B-21.6.

(c) Provided, however, that if the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in Title 26, Chapter 3 of the North Carolina Administrative Code.

(d) An applicant for certification or a certified officer shall have ~~60~~ 30 days from the date of receipt of a notice of proposed action by the Commission to request a contested case hearing.

*Statutory Authority G.S. 150B-20; 150B-21.6; 150B-38(h); 150B-40; 17E-9(b).*

## SECTION .0200 - ENFORCEMENT RULES

### .0204 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a felony ~~unless pardoned by the Governor~~; or
- (2) a crime for which the authorized punishment could have been imprisonment for more than two years.

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within a time period specified by the Commission; or
- (2) fails to meet or maintain any of the minimum employment or certification standards required by 12 NCAC 10B .0300; or
- (3) fails to satisfactorily complete the minimum in-service training requirements as presented in 12 NCAC 10B .2000 and .2100; or
- (4) has refused to submit to the drug screen as required in 12 NCAC 10B .0301(6) or .0406(b)(4) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6); or
- (5) has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to

certify, pursuant to said commission, agency, or boards' standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6), unless the positive result is explained to the Commission's satisfaction.

(c) The Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer:

- (1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
- (2) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
- (3) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or
- (4) has been removed from office by decree of the Superior Court in accordance with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230; or
- (5) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission.

(d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of initial certification; or
- (2) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment; or
- (3) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as Class B misdemeanors regardless of the date of commission or conviction; or
- (4) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misde-

meanor, each of which occurred after the date of initial certification; or

- (5) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor except the applicant may be certified if the last conviction or commission occurred more than two years prior to the date of appointment; or
- (6) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

(e) Without limiting the application of G.S. 17E, a person who has had his certification suspended or revoked may not exercise the authority or perform the duties of a justice officer during the period of suspension or revocation.

(f) Without limiting the application of G.S. 17E, a person who has been denied certification may not be employed or appointed as a justice officer or exercise the authority or perform the duties of a justice officer.

*Statutory Authority G.S. 17E-7.*

## SECTION .0300 - MINIMUM STANDARDS FOR EMPLOYMENT AND CERTIFICATION AS A JUSTICE OFFICER

### .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS

(a) Every Justice Officer employed or certified ~~as a Deputy Sheriff or Jailer~~ in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 21 years of age;
- (3) be a high school graduate, or the equivalent (GED);
- (4) have been fingerprinted by the employing agency;
- (5) have had a medical examination by a licensed physician;
- (6) have produced a negative result on a drug screen administered according to the following specifications:

- (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs; and
- (B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen; and
- (C) the drugs whose use shall be tested for shall

include at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites; and

- (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials. Copies of this information may be obtained from the National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost at the time of adoption of this Rule; and
- (E) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment; and
- (F) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Part (C) of this Rule;
- (G) every agency head shall be responsible for making adequate arrangements for the services of a medical review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician.
- (7) immediately within five working days notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged; and shall also give notification, in writing, to the Standards Division and the appointing department head following the adjudication of these criminal charges. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense where the maximum punishment allowable is 60 days or less. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions which shall be reported to the Division expressly include G.S. 20-139 (persons under the influence of drugs), G.S. 20-28(b) (driving while license revoked or permanently suspended) and G.S. 20-166 (duty to stop in event of accident). The initial notification required must specify the nature of the offense, the date of offense, and the arresting agency. The notifications of adjudication required must specify the



nature of the offense, the court in which the case was handled and the date of disposition, and must include a certified copy of the final disposition from the Clerk of Court in the county of adjudication. The notifications of adjudication must be received by the Standards Division within 30 days of the date the case was disposed of in court. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing department head within 20 days of the date the case was disposed of in court. The department head, provided he has knowledge of the officer's charge(s), shall also notify the Division within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, of the initial offenses charged and of adjudication of those offenses, from either the officer or the department head, is sufficient notice for compliance with this Subparagraph;

- (8) be of good moral character;
- (9) have a thorough background investigation conducted by the employing agency, to include a personal interview prior to employment;
- (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 10B .0307.

(b) The requirements of this Rule shall apply to all applications for certification and shall also be applicable at all times during which the justice officer is certified by the Commission.

*Statutory Authority G.S. 17E-7; 95-230 et seq.*

#### **.0304 MEDICAL EXAMINATION**

(a) Each applicant shall complete the Commission's Medical History Statement Form (F-1) and shall be examined by a physician or surgeon licensed in North Carolina to help determine his/her fitness in carrying out the physical requirements of the position of deputy sheriff or jailer detention officer. The examining physician shall read and sign the F-2A form attached to the Medical Examination Report Form (F-2) prior to beginning the examination. The examining physician shall record the results of the examination on the Medical Examination Report Form (F-2) and sign and date the form. The F-2 form shall be valid one year from the date the Medical Examination was completed and signed by the physician. The physical examination shall be conducted and the Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) shall be completed prior to whichever of the following occurs first:

- (1) the applicant's beginning the Jailer Detention Officer Certification Course and/or the Basic Law Enforcement Training Course; or
- (2) the applicant's applying to the Commission for certification.

(b) Although not presently required by these Rules, it is recommended by the Commission that each candidate for the position of justice officer be examined by a licensed psychiatrist or clinical psychologist, or be administered a psychological evaluation test battery, to determine his/her suitability to perform the essential job functions of a justice officer.

*Statutory Authority G.S. 17E-7.*

#### **.0307 CRIMINAL HISTORY RECORD**

(a) Consistent with and subject to the requirements of 12 NCAC 10B .0204, every justice officer employed or certified in North Carolina shall not have committed or been convicted by a local, state, federal or military court of:

- (1) a felony; ~~felony, unless pardoned by the Governor~~; or
- (2) a crime for which the punishment could have been imprisonment for more than two years; or
- (3) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of appointment; or
- (4) four or more crimes or unlawful acts defined as "Class B Misdemeanors" regardless of the date of conviction or commission; or
- (5) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the applicant can be employed if the last conviction or commission occurred more than two years prior to the date of appointment.

(b) The requirements of this Rule shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applications for certification.

*Statutory Authority G.S. 17E-7.*

### **SECTION .0400 - CERTIFICATION OF JUSTICE OFFICERS**

#### **.0401 CERTIFICATION OF SHERIFFS' DEPARTMENT PERSONNEL**

Every person performing the duties of a deputy sheriff or a jailer detention officer as defined in 12 NCAC 10B .0103 (13) and (14), except those certified pursuant to 12 NCAC 10B .0407, shall meet the certification requirements of this Subchapter.

*Statutory Authority G.S. 17E-4; 17E-7.*

#### **.0402 PROBATIONARY CERTIFICATION**

All justice officers, except those transferred or reinstated pursuant to Rule .0406 shall serve a probationary certification period of one year; provided that the one year probationary period has not been extended for cause pursuant to 12 NCAC 10B .0303(c); .0503(a); or .0602(a). For certification as a deputy sheriff the probationary period begins on the date the officer took the Oath of Office. For certification as a jailer detention officer, the probationary period

begins on the date the officer was appointed as a jailer detention officer.

*Statutory Authority G.S. 17E-4; 17E-7.*

#### **.0403 PROBATIONARY CERTIFICATION REQUIREMENT**

(a) For certification as a deputy sheriff or a jailer detention officer, a Report of Appointment ~~Deputy Sheriff/Jailer~~ Deputy Sheriff/Deputy Sheriff/Deputy Sheriff/Deputy Sheriff (F-4) must be submitted to the Division. Report of Appointment forms must be submitted to the Division by the sheriff's department no later than ten days after the deputy sheriff has taken the Oath of Office or the jailer detention officer has been appointed. The Division shall forward the justice officer's certification to the Department.

(b) No justice officer probationary certification will be issued by the Division prior to the applicant meeting the conditions set forth in this Paragraph. As an additional requirement for probationary certification, the applicant shall meet the following requirements:

- (1) If the applicant for probationary certification is authorized to carry a firearm pursuant to the provisions of 12 NCAC 10B .2104, the employing agency shall submit evidence of satisfactory completion of the employing agency's in-service firearms training and requalification program pursuant to 12 NCAC 10B .2000 and .2100; or
- (2) If the applicant for probationary certification is not authorized to carry a firearm pursuant to the provisions of 12 NCAC 10B .2104, the employing agency shall notify the Division, in writing, that the applicant is not authorized to carry a firearm.

*Statutory Authority G.S. 17E-4; 17E-7.*

#### **.0405 REPORT OF SEPARATION**

(a) An agency separating a person from employment or appointment as a justice officer shall, not later than ten days after separation, forward to the Division a completed Report of Separation (F-5).

(b) Although not presently required by these Rules, it is recommended by the Commission that the employing agency cancel the oath of office of a justice officer who has separated, ~~separated~~, and that the justice officer be notified by the employing agency of the effective date of separation as reported to the Division.

(c) It is required that the justice officer be notified by the employing agency with appropriate notations on the Report of Separation (Form F-5), of the effective date of separation as reported to the Division.

*Statutory Authority G.S. 17E-4.*

#### **.0407 CERTIFICATION OF FORMER SHERIFF**

(a) The Division shall issue a General Certification to any person as either a deputy sheriff or a jailer detention officer

who has previously served as an elected or appointed sheriff, if the person:

- (1) applies to the Commission within one year of ceasing to serve as an elected or appointed sheriff; and
  - (2) has served as an elected or appointed sheriff for a minimum of eight years; and
  - (3) left the office of sheriff in good standing.
- (b) In order for an officer to be certified under this Rule .0407, there must be:
- (1) compliance with the Report of Appointment form requirement of Rule .0403;
  - (2) submitted to the Division, a copy of the Oath of Office for applicants requesting certification as a deputy sheriff; and
  - (3) submitted to the Division verification that the applicant meets the requirement of this Rule .0407(a)(2).

*Statutory Authority G.S. 17E-4; 17E-7.*

#### **.0408 VERIFICATION OF RECORDS TO DIVISION**

(a) Prior to the probationary certification of each justice officer, for the purpose of verifying compliance with these Rules, the employing agency shall submit to the Division, along with the Report of Appointment (F-4), copies of the following documents:

- (1) verification of the applicant's compliance with the educational requirement pursuant to 12 NCAC 10B .0302(a);
- (2) certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;
- (3) the applicant's Medical History Statement (F-1);
- (4) the applicant's Medical Examination Report (F-2 and F-2A);
- (5) the applicant's notarized Personal History Statement (F-3);
- (6) a summary of the applicant's background investigation;
- (7) documentation of negative results on a drug screen pursuant to 12 NCAC 10B .0301(6);
- (8) certified copies of criminal charges and dispositions as required in 12 NCAC 10B .0305(e) and (f); and
- (9) verification of the applicant's compliance with the probationary certification requirements pursuant to 12 NCAC 10B .0403(b).

(b) Compliance with this Rule is waived, with the exception of the requirements of 12 NCAC 10B .0408(a)(9), for officers applying for dual certification as defined in 12 NCAC 10B .0103(12) provided that:

- (1) the officer holds a valid certification as either a deputy sheriff or jailer detention officer with the employing agency requesting dual certification; and
- (2) the officer has not had a break in service since initial certification with the employing agency requesting dual certification.

(c) All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws governing confidentiality.

*Statutory Authority G.S. 17E-4; 17E-7.*

**.0409 EMPLOYING AGENCY RETENTION OF CERTIFICATION RECORDS**

(a) Each employing agency shall place in the appropriate justice officer's personnel file the official notification of either probationary or general certification. Such files shall be available for examination at any reasonable time by representatives of the Commission for the purpose of verifying compliance with these Rules. Each personnel file shall also contain:

- (1) a copy of the applicant's Report of Appointment (F-4);
- (2) verification of the applicant's compliance with the educational requirement pursuant to 12 NCAC 10B .0302(a);
- (3) a certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;
- (4) the results of the applicant's fingerprint records check and the criminal history records check;
- (5) the applicant's Medical History Statement (F-1);
- (6) the applicant's Medical Examination Report (F-2 and F-2A);

- (7) the applicant's Personal History Statement (F-3);
- (8) a summary of the applicant's background investigation;
- (9) a copy of a commission-approved Firearms Qualification Record Form;
- (10) documentation of negative results on drug screen pursuant to 12 NCAC 10B .0301(a)(6); and
- (11) verification of the applicant's compliance with the probationary certification requirements pursuant to 12 NCAC 10B .0403(b).

(b) Compliance with this Rule is waived, with the exception of the requirements of 12 NCAC 10B .0409(11), for officers applying for dual certification as defined in 12 NCAC 10B .0103(12) provided that:

- (1) the officer holds a valid certification as either a deputy sheriff or jailer detention officer with the employing agency requesting dual certification; and
- (2) the officer has not had a break in service since initial certification with the employing agency requesting dual certification.

(c) All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws governing confidentiality.

*Statutory Authority G.S. 17E-4.*

**SECTION .0500 - MINIMUM STANDARDS OF TRAINING FOR DEPUTY SHERIFFS**

**.0502 BASIC LAW ENFORCEMENT TRAINING COURSE FOR DEPUTIES**

(a) The Commission hereby adopts as its required minimum Basic Law Enforcement Training Course 444 472 hours of instruction to include the following identified topic areas and minimum instructional hours for each area:

- |  |          |
|--|----------|
| (1) Course Orientation                                     | 2 hours  |
| (2) Constitutional Law                                     | 4 hours  |
| (3) Laws of Arrest, Search and Seizure                     | 16 hours |
| (4) Mechanics of Arrest; Arrest Procedure                  | 8 hours  |
| (5) Law Enforcement Communications and Information Systems | 4 hours  |
| (6) Elements of Criminal Law                               | 24 hours |
| (7) Defensive Tactics                                      | 16 hours |
| (8) Juvenile Laws and Procedures                           | 8 hours  |
| (9) First Responder  | 40 hours |
| (10) Firearms  | 40 hours |
| (11) Patrol Techniques                                     | 16 hours |
| (12) Crime Prevention Techniques                           | 4 hours  |
| (13) Field Notetaking and Report Writing                   | 12 hours |
| (14) Mechanics of Arrest: Vehicle Stops                    | 6 hours  |
| (15) Mechanics of Arrest: Custody Procedures               | 2 hours  |
| (16) Mechanics of Arrest: Processing Arrestee              | 4 hours  |
| (17) Crisis Management                                     | 10 hours |
| (18) Special Populations                                   | 12 hours |
| (19) Civil Disorders                                       | 8 hours  |
| (20) Criminal Investigation                                | 28 hours |

(21)	Interviews: Field and In-Custody	8 hours
(22)	Controlled Substances	6 hours
(23)	ABC Laws and Procedures	4 hours
(24)	Electrical and Hazardous Material Emergencies	12 hours
(25)	Motor Vehicle Law	20 hours
(26)	Techniques of Traffic Law Enforcement	6 hours
(27)	Law Enforcement Driver Training	16 <del>44</del> hours
(28)	Preparing For Court and Testifying in Court	12 hours
(29)	Dealing with Victims and the Public	4 hours
(30)	Ethics of Professional Law Enforcement	4 hours
(31)	Civil Process	24 hours
(32)	Supplemental Custody Procedures	8 hours
(33)	Physical Fitness Training	43 hours
(34)	Testing	13 hours

TOTAL HOURS                      444 ~~472~~ hours

(b) The "Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy is hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated matter, to apply as basic curriculum for this Basic Law Enforcement Training Course. Copies of this manual may be obtained by contacting the North Carolina Justice Academy, Post Office Box 99, Salemburg, North Carolina 28385-0099. The cost of this manual is eighty dollars (\$80.00) at the time of adoption of this Rule.

(c) Consistent with the curriculum development policy of the Commission, the Commission shall designate the developer of the Basic Law Enforcement Training Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Basic Law Enforcement Training Courses. Individuals who successfully complete such a pilot Basic Law Enforcement Training Course offering shall be deemed to have successfully complied with and satisfied the minimum training requirement.

(d) The rules governing Minimum Standards for Completion of Training, codified as Title 12, Subchapter 9B, Section .0400 of the North Carolina Administrative Code, and previously incorporated by the North Carolina Criminal Justice Education and Training Standards Commission, are hereby incorporated by reference, and shall, automatically include any later amendments and editions of the adopted matter to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission.

*Statutory Authority G.S. 17E-4(a).*

#### **.0503 TIME REQ/COMPLETION/BASIC LAW ENFORCEMENT TRAINING COURSE**

(a) Each deputy sheriff holding temporary or probationary certification shall satisfactorily complete a commission-accredited basic training course. The deputy shall complete such course within one year from the date of his/her Oath of Office. Any deputy sheriff who does not comply with this Rule or other training provisions of this Chapter shall not be authorized to exercise the powers of a deputy sheriff and shall not be authorized to exercise the power of arrest. If, however, an officer has enrolled in a commission-accredited basic law enforcement training program that concludes later than the end of the officer's probationary period, the Commission may extend, for good cause shown, the probationary period for a period not to exceed 12 months.

(b) Persons having completed a commission-accredited basic law enforcement training program and not having been duly appointed and certified in a sworn law enforcement position as defined in 12 NCAC 10B .0103(16) within one year of completion of the basic law enforcement training course shall complete a subsequent commission-accredited basic recruit training program in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0402, unless the Director determines that a delay in applying for certification was due to simple negligence on the part of the applicant or employing agency, in which case the Director may accept a commission-accredited basic training program which is over one year old. Such extension of the one year period shall not exceed 30 days from the expiration date of a commission-accredited basic training program.

*Statutory Authority G.S. 17E-4; 17E-7.*

**.0505 EVALUATION FOR TRAINING WAIVER**

(a) The Division staff shall evaluate each deputy's training and experience to determine if equivalent training has been satisfactorily completed as specified in 12 NCAC 10B .0504(a). Applicants for certification with prior law enforcement experience shall have been employed in a sworn law enforcement position in order to be considered for training evaluation under this Rule. The following rules shall be used by Division staff in evaluating a deputy's training and experience to determine eligibility for a waiver of training.

- (1) Persons who separated from a sworn law enforcement position during their probationary period after having completed a commission-accredited Basic Law Enforcement Training Course and who have been separated from a sworn law enforcement position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.
- (2) Persons who separated from a sworn law enforcement position during their probationary period without having completed Basic Law Enforcement Training, or whose certification was suspended pursuant to 12 NCAC 10B .0204(b)(1), and who have remained separated or suspended for over one year shall complete a commission-accredited Basic Law Enforcement Training Course in its entirety and successfully pass the State Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (3) Out-of-state transferees shall be evaluated to determine the amount and quality of their training and experience. Out-of-state transferees:

- (A) shall have a minimum of two years full-time sworn law enforcement experience;
- (B) shall not have a break in service exceeding two years; and
- (C) shall have successfully completed the Basic Law Enforcement Training Course accredited by the state from which he/she is transferring. Out-of-state transferees meeting these requirements shall successfully complete a commission-accredited Basic Law Enforcement Training Course which includes the following topics of North Carolina law and procedure and successfully pass the State Comprehensive Examination in its entirety within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(i) Laws of Arrest, Search and Seizure	16 hours
(ii) Elements of Criminal Law	24 hours
(iii) Juvenile Laws and Procedures	8 hours
(iv) Controlled Substances	6 hours
(v) ABC Laws and Procedures	4 hours
(vi) Motor Vehicle Laws	20 hours
(vii) Civil Process	24 hours
(viii) Supplemental Custody Procedures	8 hours
(ix) <del>Firearms Qualification (Handgun and Shotgun Courses)</del>	

<b>TOTAL HOURS</b>	<b>110 hours</b>
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- (4) Persons previously holding Grandfather law enforcement certification in accordance with G.S. 17C-10(a) or G.S. 17E-7(a) who have been separated from a sworn law enforcement position for more than one year and who have not previously completed a minimum Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (5) Persons who have completed a minimum 160-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 and who have been separated from a sworn law enforcement position for more than one year but no more than two years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
  - (A) Juvenile Law and Procedures 8 hours
  - (B) Laws of Arrest, Search and Seizure 16 hours
  - (C) Elements of Criminal Law 24 hours
  - (D) Controlled Substances 6 hours
  - (E) ABC Laws and Procedures 4 hours
  - (F) Motor Vehicle Laws 20 hours
  - (G) Law Enforcement Driver Training 16 hours
  - (H) Civil Process 24 hours

- |   |         |
|---|---------|
| (I) Supplemental Custody Procedures                                 | 8 hours |
| (J) <del>Firearms Qualification (Handgun and Shotgun Courses)</del> |         |

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TOTAL HOURS 126 hours

- (6) Persons who have completed a minimum 160-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 and who have been separated from a sworn law enforcement position for more than two years shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety regardless of training and experience and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (7) Persons who have completed a minimum 240-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1978 and continuing through September 30, 1984 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- |   |          |
|---|----------|
| (A) Laws of Arrest, Search and Seizure                              | 16 hours |
| (B) Elements of Criminal Law  | 24 hours |
| (C) Juvenile Laws and Procedures                                    | 8 hours  |
| (D) Controlled Substances   | 6 hours  |
| (E) ABC Laws and Procedures   | 4 hours  |
| (F) Motor Vehicle Laws  | 20 hours |
| (G) Civil Process   | 24 hours |
| (H) Supplemental Custody Procedures                                 | 8 hours  |
| (I) <del>Firearms Qualification (Handgun and Shotgun Courses)</del> |          |

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TOTAL HOURS 110 hours

- (8) Persons who have completed a minimum 240-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1978 and continuing through September 30, 1984 and who have been separated from a sworn law enforcement position for more than three years shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety regardless of prior training and experience and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (9) Persons who have completed a minimum 381 hour Basic Law Enforcement Training Course accredited by the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1984 and ending December 31, 1988 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- |   |          |
|---|----------|
| (A) Laws of Arrest, Search and Seizure                              | 16 hours |
| (B) Elements of Criminal Law  | 24 hours |
| (C) Juvenile Laws and Procedures                                    | 8 hours  |
| (D) Controlled Substances   | 6 hours  |
| (E) ABC Laws and Procedures   | 4 hours  |
| (F) Motor Vehicle Laws  | 20 hours |
| (G) Civil Process   | 24 hours |
| (H) Supplemental Custody Procedures                                 | 8 hours  |
| (I) <del>Firearms Qualification (Handgun and Shotgun Courses)</del> |          |

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TOTAL HOURS 110 hours

- (10) Persons transferring to a sheriff's department from another law enforcement agency who hold certification issued by the North Carolina Criminal Justice Education and Training Standards Commission and who have previously completed a commission-accredited Basic Law Enforcement Training Course beginning on or after October 1, 1984 and who have been separated from a sworn law enforcement position for no more than one year or who have had no break in service shall be required to complete the following enumerated topics of a commis-

sion-accredited Basic Law Enforcement Training Course and successfully pass that portion of the State Comprehensive Examination which deals with those subjects within 12 months of the date of appointment as defined in 12 NCAC 10B .0103(1).

- |     |                                 |          |
|-----|---------------------------------|----------|
| (A) | Civil Process                   | 24 hours |
| (B) | Supplemental Custody Procedures | 8 hours  |

<b>TOTAL HOURS</b>	<b>32 hours</b>
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- (11) Persons who have completed a minimum 369-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Commission under guidelines beginning October 1, 1984 and ending July 1, 1989 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- |     |   |          |
|-----|---|----------|
| (A) | Laws of Arrest, Search and Seizure                              | 16 hours |
| (B) | Elements of Criminal Law  | 24 hours |
| (C) | Juvenile Laws and Procedures                                    | 8 hours  |
| (D) | Controlled Substances   | 6 hours  |
| (E) | ABC Laws and Procedures   | 4 hours  |
| (F) | Motor Vehicle Laws  | 20 hours |
| (G) | Civil Process   | 24 hours |
| (H) | Supplemental Custody Procedures                                 | 8 hours  |
| (I) | <del>Firearms Qualification (Handgun and Shotgun Courses)</del> |          |

<b>TOTAL HOURS</b>	<b>110 hours</b>
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- (12) Persons who have completed a minimum 422-hour Basic Law Enforcement Training Course accredited by the North Carolina Sheriff's Education and Training Standards Commission under the guidelines administered beginning January 1, 1989 and ending February 1, 1991 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- |     |   |          |
|-----|---|----------|
| (A) | Laws of Arrest, Search and Seizure                              | 16 hours |
| (B) | Elements of Criminal Law  | 24 hours |
| (C) | Juvenile Laws and Procedures                                    | 8 hours  |
| (D) | Controlled Substances   | 6 hours  |
| (E) | ABC Laws and Procedures   | 4 hours  |
| (F) | Motor Vehicle Laws  | 20 hours |
| (G) | Civil Process   | 24 hours |
| (H) | Supplemental Custody Procedures                                 | 8 hours  |
| (I) | <del>Firearms Qualification (Handgun and Shotgun Courses)</del> |          |

<b>TOTAL HOURS</b>	<b>110 hours</b>
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- (13) Persons who have previously completed a minimum 410-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning July 1, 1989 and ending February 1, 1991 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- |     |   |          |
|-----|---|----------|
| (A) | Laws of Arrest, Search and Seizure                              | 16 hours |
| (B) | Elements of Criminal Law  | 24 hours |
| (C) | Juvenile Laws and Procedures                                    | 8 hours  |
| (D) | Controlled Substances   | 6 hours  |
| (E) | ABC Laws and Procedures   | 4 hours  |
| (F) | Motor Vehicle Laws  | 20 hours |
| (G) | Civil Process   | 24 hours |
| (H) | Supplemental Custody Procedures                                 | 8 hours  |
| (I) | <del>Firearms Qualification (Handgun and Shotgun Courses)</del> |          |

	TOTAL HOURS	110 hours
(14) Persons who have completed a minimum 444-hour Basic Law Enforcement Training Course accredited by the North Carolina Sheriffs' Education and Training Standards Commission under the guidelines administered beginning February 1, 1991 <u>and ending January 1, 1996</u> and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).		
(A) Laws of Arrest, Search and Seizure		16 hours
(B) Elements of Criminal Law		24 hours
(C) Juvenile Laws and Procedures		8 hours
(D) Controlled Substances		6 hours
(E) ABC Laws and Procedures		4 hours
(F) Motor Vehicle Laws		20 hours
(G) Civil Process		24 hours
(H) Supplemental Custody Procedures		8 hours
(I) <del>Firearms Qualification (Handgun and Shotgun Courses)</del>		

	TOTAL HOURS	110 hours
(15) Persons who have previously completed a minimum 432-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning February 1, 1991 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).		
(A) Laws of Arrest, Search and Seizure		16 hours
(B) Elements of Criminal Law		24 hours
(C) Juvenile Laws and Procedures		8 hours
(D) Controlled Substances		6 hours
(E) ABC Laws and Procedures		4 hours
(F) Motor Vehicle Laws		20 hours
(G) Civil Process		24 hours
(H) Supplemental Custody Procedures		8 hours
(I) <del>Firearms Qualification (Handgun and Shotgun Courses)</del>		

	TOTAL HOURS	110 hours
(16) Persons who have completed training as a federal law enforcement officer and are appointed as a deputy sheriff in North Carolina shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety regardless of previous federal training and experience and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).		
(17) Persons out of the law enforcement profession for over three years regardless of prior training or experience shall complete a commission-accredited Basic Law Enforcement Training Course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).		
(18) Wildlife Enforcement Officers who completed the Basic Law Enforcement Training Course prior to September 30, 1985 and are sworn as justice officers shall be subject to the evaluation rules as stated in 12 NCAC 10B .0505(a)(1) and (a)(4) through (11).		
(19) Wildlife Enforcement Officers who separate from employment with the Wildlife Enforcement Division and have less than one year break in service, who transfer to a Sheriff's Department in a sworn capacity, and who completed their Basic Training after September 30, 1985 shall complete the following blocs of instruction and pass the state exam in its entirety within <del>one year of their date of appointment as defined in 12 NCAC 10B .0403(1).</del> <u>the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).</u>		
(A) Crime Prevention Techniques		4 hours
(B) Mechanics of Arrest: Custody Procedure		2 hours
(C) Mechanics of Arrest: Processing Arrestee		4 hours
(D) Special Populations		12 hours
(E) Techniques of Traffic Law Enforcement		6 hours
(F) Dealing with Victims and the Public		8 hours



(G) Civil Process	24 hours
(H) Supplemental Custody Procedures	8 hours
( <del>+</del> ) <del>Firearms Qualification (Handgun and Shotgun Courses)</del>	

TOTAL HOURS 68 hours

- (20) Wildlife Enforcement Officers who completed Basic Law Enforcement Training on or after September 30, 1985 and have been out of a sworn position over one year but no more than three years, and are sworn as a justice officer must complete the following blocs of instructions and pass the state exam in its entirety during their probationary period as prescribed in 12 NCAC 10B .0503 (a).

(A) Laws of Arrest Search and Seizure	16 hours
(B) Elements of Criminal Law	24 hours
(C) Juvenile Laws and Procedures	8 hours
(D) Controlled Substances	6 hours
(E) ABC Laws and Procedures	4 hours
(F) Motor Vehicle Laws	20 hours
(G) Crime Prevention Techniques	4 hours
(H) Mechanics of Arrest: Custody Procedures	2 hours
(I) Mechanics of Arrest: Processing Arrestees	4 hours
(J) Special Populations	12 hours
(K) Techniques of Traffic Law Enforcement	6 hours
(L) Dealing with Victims and the Public	8 hours
(M) Civil Process	24 hours
(N) Supplemental Custody Procedures	8 hours
( <del>+</del> ) <del>Firearms Qualification (Handgun and Shotgun Courses)</del>	

TOTAL HOURS 146 hours

- (21) Alcohol Law Enforcement Officers who completed the Basic Law Enforcement Training Course prior to April 1, 1983 or after November 1, 1993, and are sworn as a justice officer shall be subject to the evaluation rules as prescribed in 12 NCAC 10B .0505(a)(3) through (8) and ~~(a)(14)~~ and (a)(14), (15) and (24).

- (22) Alcohol Law Enforcement Officers who separate from employment with the Alcohol Law Enforcement Division and have less than a one year break in service, who transfer to a Sheriff's Department in a sworn capacity, and who completed their Basic Training administered beginning April 1, 1983 and ending November 1, 1993 shall complete the following blocs of instruction and pass the state comprehensive exam in its entirety within ~~one year of their date of appointment as defined in 12 NCAC 10B .0103(1).~~ the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(A) Law Enforcement Communication and Information Systems	4 hours
(B) Patrol Techniques	16 hours
(C) Crime Prevention Techniques	4 hours
(D) Mechanics of Arrest: Vehicle Stops	6 hours
(E) Mechanics of Arrest: Custody Procedures	2 hours
(F) Mechanics of Arrest: Processing Arrestee	4 hours
(G) Special Populations	12 hours
(H) Interviews: Field and In-Custody	8 hours
(I) Motor Vehicle Law	20 hours
(J) Techniques of Traffic Law Enforcement	6 hours
(K) Dealing with Victims and the Public	8 hours
(L) Civil Process	24 hours
(M) Supplemental Custody Procedures	8 hours
( <del>N) Firearms Qualification (Handgun and Shotgun Course)</del>	

TOTAL HOURS 122 hours

- (23) Alcohol Law Enforcement Officers who completed their Basic Training administered beginning April 1, 1983 and ending November 1, 1993 and are sworn as a justice officer and who have been out of a sworn position for over one year but no more than three years shall complete the following blocs of instruction and pass the state examination in its entirety during their one year probationary period as prescribed in 12 NCAC 10B .0503(a).

(A) Laws of Arrest, Search and Seizure	16 hours
(B) Elements of Criminal Law	24 hours
(C) Juvenile Laws and Procedures	8 hours

(D) Controlled Substances	6 hours
(E) ABC Laws and Procedures	4 hours
(F) Law Enforcement Communication and Information Systems	4 hours
(G) Patrol Techniques	16 hours
(H) Crime Prevention Techniques	4 hours
(I) Mechanics of Arrest: Vehicle Stops	6 hours
(J) Mechanics of Arrest: Custody Procedures	2 hours
(K) Mechanics of Arrest: Processing Arrestee	4 hours
(L) Special Populations	12 hours
(M) Interviews: Field and In-Custody	8 hours
(N) Motor Vehicle Law	20 hours
(O) Techniques of Traffic Law Enforcement	6 hours
(P) Dealing with Victims and the Public	8 hours
(Q) Civil Process	24 hours
(R) Supplemental Custody Procedures	8 hours
(S) <del>Firearms Qualification (Handgun and Shotgun Course)</del>	

**TOTAL HOURS** 180 hours

(24) Persons who have previously completed a minimum 472-hour Basic Law Enforcement Training Course accredited by the North Carolina Sheriffs' Education and Training Standards Commission, under the guidelines administered beginning January 1, 1996 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination with the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(A) <u>Laws of Arrest, Search and Seizure</u>	16 hours
(B) <u>Elements of Criminal Law</u>	24 hours
(C) <u>Juvenile Laws and Procedures</u>	8 hours
(D) <u>Controlled Substances</u>	6 hours
(E) <u>ABC Laws and Procedures</u>	4 hours
(F) <u>Motor Vehicle Laws</u>	20 hours
(G) <u>Civil Process</u>	24 hours
(H) <u>Supplemental Custody Procedures</u>	8 hours

**TOTAL HOURS** 110 hours

(b) In those instances not specifically incorporated within this Section or where an evaluation of the applicant's prior training and experience determines that required attendance in the entire Basic Law Enforcement Training Course would be impractical, the director is authorized to exercise his/her discretion in determining the amount of training those persons shall complete during their probationary period.

*Statutory Authority G.S. 17E-4; 17E-7.*

## SECTION .0600 - MINIMUM STANDARDS OF TRAINING FOR DETENTION OFFICERS

### .0601 JAILER DETENTION OFFICER CERTIFICATION COURSE

(a) This Section establishes the current ~~minimum~~ standard by which Sheriffs' Department personnel shall receive ~~jailer~~ detention officer training. These rules will serve to raise the level of ~~jailer~~ detention officer training heretofore available to law enforcement officers across the state. The Jailer Detention Officer Certification Course shall consist of a minimum of ~~135~~ 140 hours of instruction designed to provide the trainee with the skills and knowledge necessary to perform those tasks considered essential to the administration and operation of a confinement facility.

(b) Each Jailer Detention Officer Certification Course shall include the following identified topic areas and approximate minimum instructional hours for each area:

(1) <del>Disciplinary Procedures</del> <u>Orientation</u>	2 hours
(2) <del>Contraband/Searches</del> <u>Criminal Justice System</u>	6 <del>3</del> hours
(3) <del>Transportation of Inmates</del> <u>Legal Aspects of Management &amp; Supervision</u>	6 <del>19</del> hours
(4) <del>Processing Inmates</del> <u>Contraband/Searches</u>	5 <del>6</del> hours
(5) <del>Patrol and Emergency Procedures</del> <u>Processing Inmates</u>	5 hours
(6) <del>Recreation and Visiting</del> <u>First Aid &amp; CPR</u>	2 <del>10</del> hours
(7) <del>Key and Tool Control</del> <u>Medical Care in the Jail</u>	1 <del>5</del> hours
(8) <del>Stress Patrol &amp; Security Functions of the Jail</del>	2 <del>5</del> hours

(9)	<u>Special Populations Key and Tool Control</u>	5 <u>2</u> hours
(10)	<u>Medical Care in the Jail Supervision &amp; Management of Inmates</u>	5 hours
(11)	<u>First Aid and CPR (National Safety Council) Suicides &amp; Crisis Management</u>	14 <u>5</u> hours
(12)	<u>Unarmed Self Defense Introduction to Rules &amp; Regulations Governing Jails</u>	18 <u>2</u> hours
(13)	<u>Written Communication Stress</u>	3 <u>2</u> hours
(14)	<u>Legal Rights and Responsibilities Investigative Process in the Jail</u>	12 <u>9</u> hours
(15)	<u>Civil Liability Unarmed Self-Defense</u>	2 <u>24</u> hours
(16)	<u>Suicides in the Jail Special Populations</u>	4 hours
(17)	<u>Introduction to Rules and Regulations Governing Jail Facilities Transportation of Inmates</u>	3 <u>6</u> hours
(18)	<u>Role of the Jailer in Supervision, Communication, and Crisis Management Fire Emergencies</u>	6 <u>12</u> hours
(19)	<u>Handling Fire Emergencies Physical Assessment</u>	16 <u>4</u> hours
(20)	<u>Investigative Duties of the Jailer Review/Testing</u>	4 <u>7</u> hours
(21)	<u>Legal Aspects of Criminal Investigation State Comprehensive Examination</u>	3 hours
(22)	<u>Testifying in Court</u>	4 <u>hours</u>
(23)	<u>Physical Assessment of Jailers</u>	4 <u>hours</u>
(24)	<u>Commission Exam</u>	3 <u>hours</u>

TOTAL HOURS

135 140 hours

(c) In addition to the requirements of Paragraph (b) of this Rule, the reading component of a standardized test shall be administered to each trainee within the first two weeks of the Jailer Detention Officer Certification Course, and the reading grade level reported as a part of the trainee's official training records. The school director shall determine the test instrument to be used.

(d) Consistent with the curriculum development policy of the Commission, the Commission shall designate the developer of the Jailer Detention Officer Certification Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Jailer Detention Officer Certification Courses. Individuals who successfully complete such a pilot Jailer Detention Officer Certification Course offering shall be deemed to have successfully complied with and satisfied the minimum training requirement.

(e) The "Jailer Detention Officer Certification Training Manual" as published by the North Carolina Justice Academy is hereby adopted by reference and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c) to apply as the basic curriculum for the Jailer Detention Officer Certification Course.

(f) The "Jailer Detention Officer Certification Course Management Guide" as published by the North Carolina Justice Academy is hereby adopted by reference and shall automatically include any later amendments, editions of the adopted matter as authorized by G.S. 150B-14(c) to be used by certified school directors in planning, implementing and delivering basic jailer detention officer training. Each certified school director shall be issued a copy of the guide at the time of certification at no cost to the accredited school.

*Statutory Authority G.S. 17E-4(a).*

**.0602 TIME REQ/COMPLETION//DETENTION OFFICER CERT TRAINING COURSE**

(a) Each individual employed by a sheriff's department or a district confinement facility as a jailer detention officer holding probationary certification shall satisfactorily complete a commission-accredited jailer detention officer training course. The individual shall complete such course within one year from the date of his original appointment as a jailer detention officer as determined by the date of the probationary certification. Any individual employed as a jailer detention officer who does not comply with this Rule or other training provisions of this Chapter shall not be authorized to exercise the powers of a jailer detention officer. If, however, an individual has enrolled in a commission-accredited jailer detention officer course that concludes later than the end of the individual's probationary period, the Commission may extend, for good cause shown, the probationary period for a period not to exceed six months.

(b) Persons having completed a commission-accredited jailer detention officer training course and not having been duly appointed and certified as a jailer detention officer within one year of completion of the course shall complete a subsequent commission-accredited jailer detention officer training course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a), unless the Director determines that a delay in applying for certification was due to simple negligence on the part of the applicant or employing agency, in which case the Director may accept the commission-accredited jailer detention officer training program which is over one year old. Such extension of the one year period shall not exceed 30 days from the expiration date of a commission-accredited jailer detention officer training program.

*Statutory Authority G.S. 17E-4.*

**.0603 EVALUATION FOR TRAINING WAIVER**

(a) The following rules shall be used by division staff in evaluating a jailer's detention officer's training and experience to determine eligibility for a waiver of training:

- (1) Persons who have separated from a jailer detention officer position during the probationary period after having completed a commission-accredited jailer detention officer training course and who have been separated from a jailer detention officer position for more than one year shall complete a subsequent commission-accredited jailer detention officer training course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as described in 12 NCAC 10B .0602(a).
- (2) Persons who separated from a jailer detention officer position during their probationary period after having completed a commission-accredited jailer detention officer training course and who have been separated from a jailer detention officer position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.
- (3) Persons who separated from a jailer detention officer position during the probationary period without having completed a jailer detention officer training course or whose certification was suspended pursuant to 12 NCAC 10B .0204(b)(1) and who have remained separated or suspended for over one year shall complete a commission-accredited jailer detention officer training course in its entirety and successfully pass the State Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (4) Persons holding General Jailer Detention Officer Certification who have completed a commission-accredited jailer detention officer training course and who have separated from a jailer detention officer position for more than one year shall complete a subsequent commission-accredited jailer detention officer training course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (5) Persons holding Grandfather Jailer Detention Officer Certification who separate from a jailer detention officer position and remain separated from a jailer detention officer position for more than one year shall be required to complete a commission-accredited jailer detention officer training program in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (6) Persons transferring to a sheriff's department from another law enforcement agency who hold a jailer detention officer certification issued by the North Carolina Criminal Justice Education and Training Standards Commission shall be subject to evaluation of their prior training and experience on an individual basis. The Division staff shall determine the amount of training required of these applicants.
- (7) Persons holding general certification as a correctional officer issued by the North Carolina Criminal Justice Education and Training Standards Commission and who:
  - (A) completed training as a correctional officer after January 1, 1981; and
  - (B) transfer to a sheriff's department or a district confinement facility in a jailer detention officer position; and
  - (C) have had less than a one year break in service, or no break in service, shall serve a 12-month probationary period as prescribed in 12 NCAC 10B .0602(a) and shall complete the following topic areas in a commission-accredited jailer detention officer certification course and take the state examination in its entirety during that probationary period:
 

(i) <u>Disciplinary Procedures Orientation</u>	2 hours
(ii) <u>Medical Care in the Jail Legal Aspects of Jail Management &amp; Supervision</u>	5 <del>19</del> hours
(iii) <u>Legal Rights and Responsibilities Medical Care in the Jail</u>	12 <del>5</del> hours
(iv) <u>Civil Liability Investigative Process in the Jail</u>	2 <del>2</del> hours
(v) <u>Suicides and Crisis Management</u>	4 <del>5</del> hours
(vi) <u>Introduction to Rules and Regulations Governing Jail Facilities</u>	3 <del>2</del> hours
(vii) <u>Handling Fire Emergencies in the Jail</u>	16 <del>12</del> hours
(viii) <u>Investigative Duties of the Jailer</u>	3 <del>hours</del>
(ix) <u>Legal Aspects of Criminal Investigation</u>	3 <del>hours</del>

TOTAL HOURS

~~50~~ 54 hours

(b) In those instances not specifically incorporated within this Section or where an evaluation of the applicant's prior training and experience determines that required attendance in the entire Jailer Detention Officer Training Course would be impractical, the director is authorized to exercise his/her discretion in determining the amount of training those persons shall complete during their probationary period.

Statutory Authority G.S. 17E-4; 17E-7.

**.0604 TRAINEE ATTENDANCE**

(a) Each trainee enrolled in an accredited "~~Jailer~~ Detention Officer Certification Course" shall attend all class sessions. The sheriff shall be responsible for the trainee's regular attendance at all sessions of the ~~jailer~~ detention officer training course.

(b) The school director may recognize valid reasons for class absences and may excuse a trainee from attendance at specific class sessions. However, in no case may excused absences exceed ten percent of the total class hours for the course offering.

(c) If the school director grants an excused absence from a class session, he shall schedule appropriate make-up work and ensure the satisfactory completion of such work during the current course presentation or in a subsequent course delivery as is permissible under 12 NCAC 10B .0605.

(d) A trainee shall not be eligible for administration of the State Comprehensive Examination nor certification for successful course completion if the cumulative total of class absences, with accepted make-up work, exceeds ten percent of the total class hours of the accredited course offering and should be expediently terminated from further course participation by the school director at the time of such occurrence.

(e) The school director may terminate a trainee from course participation or may deny certification of successful course completion where the trainee is habitually tardy to, or regularly departs early from, class meetings or field exercises.

(f) Where a trainee is enrolled in a program as required in 12 NCAC 10B .0601, attendance shall be 100 percent in order to receive a successful course completion.

*Statutory Authority G.S. 17E-4; 17E-7.*

**.0605 COMPLETION OF DETENTION OFFICER CERTIFICATION COURSE**

(a) Each delivery of an accredited "~~Jailer~~ Detention Officer Certification Course" is considered to be a unit as set forth in 12 NCAC 10B .0601. Each trainee shall attend and satisfactorily complete a full course during a scheduled delivery. The school director may develop supplemental rules as set forth in 12 NCAC 10B .0704(a)(7), but may not add substantive courses, or change or expand the substance of the courses set forth in 12 NCAC 10B .0601. This Rule does not prevent the instruction on local agency rules or standards but such instruction will not be considered or endorsed by the Commission for purposes of certification. The Director may issue prior written authorization for a specified trainee's limited enrollment in a subsequent delivery of the same course where the school director provides evidence that:

- (1) The trainee attended and satisfactorily completed specified class hours and topics of the "~~Jailer Training~~" course "Detention Officer Certification Course" but through extended absence occasioned by illness, accident, emergency, or other good cause was absent for more than ten percent of the total class hours of the course offering; or
- (2) The trainee was granted excused absences by the school director that did not exceed ten percent of the total class hours for the course offering and the school director could not schedule appropriate make-up work during the current course offering as specified in 12 NCAC 10B .0604(c) due to valid reasons; or
- (3) The trainee participated in an offering of the "~~Jailer~~ Detention Officer Certification Course" but had an identified deficiency in essential knowledge or skill in either one, two or three, but no more than three, of the specified topic areas incorporated in the course content as prescribed under 12 NCAC 10B .0601(b).

(b) An authorization of limited enrollment in a subsequent course delivery may not be used by the Director unless in addition to the evidence required by Paragraph (a) of this Rule:

- (1) The trainee submits a written request to the Director, justifying the limited enrollment and certifying that the trainee's participation shall be accomplished pursuant to Paragraph (c) of this Rule; and
- (2) The school director of the previous school offering submits to the director a certification of the particular topics and class hours attended and satisfactorily completed by the trainee during the original enrollment.

(c) An authorization of limited enrollment in a subsequent course delivery permits the trainee to attend an offering of the "~~Jailer~~ Detention Officer Certification Course" commencing within 120 calendar days from the last date of trainee participation in prior course delivery, but only if the trainee's enrollment with active course participation can be accomplished within the period of the trainee's probationary certification:

- (1) The trainee need only attend and satisfactorily complete those portions of the course which were missed or identified by the school director as areas of trainee deficiency in the proper course participation.
- (2) Following proper enrollment in the subsequent course offering, scheduled class attendance and active participation with satisfactory achievement in the course, the trainee would be eligible for administration of the State Comprehensive Examination by the Commission and possible certification of successful course completion.

(d) A trainee who is deficient in four or more subject-matter or topical areas at the conclusion of the course delivery shall complete a subsequent program in its entirety.

*Statutory Authority G.S. 17E-4; 17E-7.*

#### **.0606 COMP WRITTEN EXAM - DETENTION OFFICER CERTIFICATION COURSE**

(a) At the conclusion of a school's offering of the "~~Jailer~~ Detention Officer Certification Course", an authorized representative of the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the course work. A trainee cannot be administered the comprehensive written examination until such time as all course work is successfully completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas as described in 12 NCAC 10B .0601(b).

(c) The Commission's representative shall submit to the school director within ten days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 70 percent correct answers.

(e) A trainee who has fully participated in a scheduled delivery of an accredited training course and has demonstrated satisfactory competence in each motor-skill or performance area of the course curriculum but has failed to achieve the minimum score of 70 percent on the Commission's comprehensive written examination may request the Director to authorize a re-examination of the trainee.

- (1) A trainee's Request for Re-examination shall be made in writing on the Commission's form within 30 days after the original examination and shall be received by the Division before the expiration of the trainee's probationary certification as a ~~jailer~~ detention officer.
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the trainee's "~~Jailer~~ Detention Officer Certification Course".
- (3) A trainee shall have only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety within 90 days after the original examination.
- (4) A trainee will be assigned in writing by the Division a place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve the prescribed minimum score of 70 on the examination, the trainee may not be recommended for certification and must enroll and complete a subsequent course in its entirety before further examination may be permitted.

*Statutory Authority G.S. 17E-4; 17E-7.*

#### **.0607 SATISFACTION OF MINIMUM TRAINING REQUIREMENTS**

In order to satisfy the minimum training requirements for certification as a ~~jailer~~ detention officer, a trainee shall:

- (1) achieve a score of 70 percent correct answers on the Commission-administered comprehensive written examination;
- (2) demonstrate successful completion of an accredited offering of the "~~Jailer~~ Detention Officer Certification Course" as shown by the certification of the school director; and
- (3) obtain the recommendation of the trainee's school director that the trainee possesses at least the minimum degree of general attributes, knowledge, and skill to function as an inexperienced ~~jailer~~ detention officer.

*Statutory Authority G.S. 17E-4; 17E-7.*

### **SECTION .0700 - MINIMUM STANDARDS FOR JUSTICE OFFICER SCHOOLS AND TRAINING PROGRAMS OR COURSES OF INSTRUCTION**

#### **.0702 ADMINISTRATION OF JUSTICE OFFICER SCHOOLS**

The rules covering the administration of Criminal Justice Schools and training programs or courses of instruction, codified as Title 12, Subchapter 9B, Section .0200 of the North Carolina Administrative Code, effective and previously adopted by the North Carolina Criminal Justice Education And Training Standards Commission are hereby adopted by reference and shall automatically include any

later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c) to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission with the exception of the ~~Jailer~~ Detention Officer Certification Course.

*Statutory Authority G.S. 17E-4.*

#### **.0703 ADMINISTRATION OF DETENTION OFFICER CERTIFICATION COURSE**

(a) The executive officer or officers of the institution or agency sponsoring a ~~Jailer~~ Detention Officer Certification Course shall have primary responsibility for implementation

of these rules and standards and for administration of the school.

(b) The executive officers shall designate a compensated staff member who is certified by the Commission who may apply to be the school director. The school director shall have administrative responsibility for planning scheduling, presenting, coordinating, reporting, and generally managing each sponsored ~~jailer training course~~ detention officer certification course.

(c) The executive officers of the institution or agency sponsoring the Jailer Detention Officer Certification Course shall:

- (1) acquire and allocate sufficient financial resources to provide commission-certified instructors and to meet other necessary program expenses;
- (2) provide adequate secretarial, clerical, and other supportive staff assistance as required by the school director;
- (3) provide or make available suitable facilities, equipment, materials, and supplies for comprehensive and qualitative course delivery, specifically including the following:
  - (A) a comfortable, well-lighted and ventilated classroom with a seating capacity sufficient to accommodate all attending trainees;
  - (B) audio-visual equipment and other instructional devices and aids necessary and beneficial to the delivery of effective training;
  - (C) a library for trainees' use covering the subject matter areas relevant to the training course, maintained in current status and having sufficient copies for convenient trainee access;
  - (D) Where required by course content, provide or make available facilities, equipment, and supplies to provide training in physical and motor-skill exercises such as handling disruptive people, CPR, handling fire emergencies and cell searches.

*Statutory Authority G.S. 17E-4.*

#### **.0704 RESPONSIBILITIES: SCHOOL DIRECTORS**

(a) In planning, developing, coordinating, and delivering each commission accredited Jailer Detention Officer Certification Course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the Commission.
- (A) The Jailer Detention Officer Certification Course shall be presented with a minimum of 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed.
- (B) In the event of exceptional or emergency circumstances, the Director may, upon written finding of justification, grant a waiver of the minimum hours requirement.

(2) Select and schedule qualified instructors who are properly certified by the Commission. The selecting and scheduling of instructors is subject to special requirements as follows:

- (A) No single individual may be scheduled to instruct more than 35 percent of the total hours of the curriculum during any one delivery except as set forth in Part (a)(2)(B) of this Rule.
- (B) Where the school director shows exceptional or emergency circumstances and the school director documents that an instructor is qualified to instruct more than 35 percent of the total hours of the curriculum, the Director of the Division may grant written approval for the expansion of the individual instructional limitation.
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities.
- (4) Review each instructor's lesson plans and other instructional materials for conformance to established commission standards and to minimize repetition and duplication of subject matter.
- (5) Shall permanently maintain records of all Jailer Detention Officer Certification Courses sponsored or delivered by the school, reflecting:
  - (A) Course title;
  - (B) Delivery hours of course;
  - (C) Course delivery dates;
  - (D) Names and addresses of instructors utilized within designated subject-matter areas;
  - (E) A roster of enrolled trainees, showing class attendance and designating whether each trainee's course participation was successful or unsuccessful including individual test scores indicating each trainee's proficiency in each topic area and methods or instruments;
  - (F) Copies of all rules, regulations and guidelines developed by the school director;
  - (G) Documentation of any changes in the initial course outline, including substitution of instructors; and
  - (H) Documentation of make-up work achieved by each individual trainee, including test scores and methods or instruments.
- (6) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas.
- (7) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
  - (A) Effective course delivery;
  - (B) Establishing responsibilities and obligations of



agencies or departments employing course trainees; and

- (C) Regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.

A copy of such rules, regulations and requirements shall be submitted to the Director as an attachment to the Pre-Delivery Report of Training Course Presentation, Form F-7A. A copy of such rules shall also be given to each trainee and to the sheriff of each trainee's employing agency at the time the trainee enrolls in the course.

- (8) If appropriate, recommend housing and dining facilities for trainees.
- (9) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation (Form F-7A) along with the following attachments:
  - (A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments;
  - (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for certification of instructors.
  - (C) The Director shall review the submitted Pre-Delivery Report together with all attachments to ensure that the school is in compliance with all commission mandated rules and regulations; if school's rules are found to be in violation, the Director shall notify the school director of deficiency, and approval will be withheld until all matters are in compliance with the Commissions' rules.
- (10) Administer the course delivery in accordance with commission-approved procedures, guidelines, and standards and ensure that the training offered is as effective as possible.
- (11) Monitor or designate a certified instructor to monitor the presentations of all probationary instructors during course delivery and prepare formal written evaluations on their performance and suitability for subsequent instructional assignments. These evaluations shall be prepared on commission-approved forms and forwarded to the Division at the conclusion of each delivery. Based on this evaluation the school director shall have the added responsibility for recommending approval or denial of requests for General Jail Detention Officer Instructor Certification, Limited Lecturer Certification or Professional Lecturer Certification.
- (12) Monitor or designate a certified instructor to monitor the presentations of all other instructors during course delivery and prepare formal written evaluations on their performance and suitability for subsequent instructional assignments.

Instructor evaluations shall be prepared on commission-approved forms in accordance with commission standards. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request.

- (13) Ensure that any designated certified instructor who is evaluating the instructional presentation of another shall, at a minimum, hold certification in the same instructional topic area as that being taught.
- (14) Administer or designate a qualified person to administer appropriate tests as determined necessary at various intervals during course delivery.
- (15) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated.
- (16) During a delivery of the Jail Detention Officer Certification Course, make available to authorized representatives of the Commission three hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.
- (17) Not more than ten days after receiving from the Commission's representative the Report of Examination Scores, the school director shall submit to the Commission a Post-Delivery Report of Training Course Presentation (Form 7-B).

Statutory Authority G.S. 17E-4.

#### .0705 CERTIFICATION: SCHOOL DIRECTORS

(a) Any person designated to act as, or who performs the duties of, a school director in the delivery or presentation of a commission-accredited jail detention officer training course shall be and continuously remain certified by the Commission as a school director.

(b) To qualify for certification as school director of the Jail Detention Officer Certification Course, the applicant shall:

- (1) Submit a written request for the issuance of such certification executed by the executive officer of the institution or agency currently accredited, or which may be seeking accreditation, by the Commission to make presentation of accredited training programs and for whom the applicant will be the designated school director.
- (2) Be currently certified as a criminal justice instructor by the North Carolina Criminal Justice Education and Training Standards Commission; and
- (3) Attend or must have attended the most current offering of the school director's conference as



presented by the Commission staff and staff of the North Carolina Criminal Justice Education and Training Standards Commission and Standards Division.

*Statutory Authority G.S. 17E-4.*

**.0706 TERMS AND CONDITIONS OF SCHOOL DIRECTOR CERTIFICATION**

(a) The term of certification as a school director is two years from the date the Commission issues the certification unless earlier terminated by action of the Commission. Upon application the certification may subsequently be renewed by the Commission for two-year periods. The application for renewal shall contain documentation meeting the requirements of Rule .0705(b)(1).

(b) To retain certification as a school director, the school director shall:

- (1) Adequately perform the duties and responsibilities of a school director as specifically required in Rule .0704.
- (2) Maintain an updated copy of the "~~Jailer Training Instructor Notebook~~" "Detention Officer Certification Training Manual" assigned to each accredited school.

*Statutory Authority G.S. 17E-4.*

**SECTION .0800 - ACCREDITATION OF JUSTICE OFFICER SCHOOLS AND TRAINING COURSES**

**.0801 ACCREDITATION: JUSTICE OFFICER SCHOOLS/TRAINING COURSES**

The rules covering the accreditation of Criminal Justice Schools and training courses, codified as Title 12, Subchapter 9C, Section .0400 of the North Carolina Administrative Code, and previously adopted by the North Carolina Criminal Justice Education And Training Standards Commission, are hereby adopted by reference and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c), to apply to actions of the Commission with the exception of the Jail Detention Officer Instructor, Jail Detention Officer Schools and Training Courses.

*Statutory Authority G.S. 17E-4.*

**.0802 ACCREDITATION: DELIVERY/DETENTION OFFICER CERTIFICATION COURSE**

(a) An institution or agency to be accredited to deliver a Jailer Detention Officer Certification Course must submit a Form F-7 requesting school accreditation.

(b) School accreditation shall remain effective until surrendered, suspended, or revoked.

(c) The Commission may suspend or revoke the accreditation of a school when it finds that the school has failed to meet or to continuously maintain any requirement, standard

or procedure for school accreditation or course delivery as required by Section .0700 of this Subchapter.

*Statutory Authority G.S. 17E-4.*

**.0803 REPORTS/DETENTION OFFICER CERT COURSE PRESENTATION/COMPLETION**

Each presentation of the Jailer Detention Officer Certification Course shall be reported to the Commission as follows:

- (1) After acquiring accreditation for the course and before commencing each delivery of the course, the school director shall, no less than 30 days prior to the scheduled delivery, notify the Division of the school's intent to offer the training course by submitting a Pre-Delivery Report of Training Course Presentation (Form F-7A); and
- (2) Upon completing delivery of the accredited course, and not more than ten days after receiving from the Commission's representative the Report of Examination Scores, the school director shall notify the Division regarding the progress and achievement of each enrolled trainee by submitting a Post-Delivery Report of Training Course Presentation (Form F-7B). This report shall also include each trainee's reading grade level as determined by testing required in 12 NCAC 10B .0601(c).

*Statutory Authority G.S. 17E-4; 17E-7.*

**SECTION .0900 - MINIMUM STANDARDS FOR JUSTICE OFFICER INSTRUCTORS**

**.0901 CERT/INSTRUCTORS/BASIC LAW ENFORCEMENT TRAINING COURSE**

The rules covering the certification of instructors, codified as Title 12, Subchapter 9B, Section .0300 of the North Carolina Administrative Code, and previously adopted by the North Carolina Criminal Justice Education and Training Standards Commission, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials, to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission with the exception of instructors for the Jailer Detention Officer Certification Course. Copies of the publication may be obtained from the Office of Administrative Hearings, Capehart-Crocker House, 424 North Blount Street, Raleigh, North Carolina 27601. The cost per copy is two dollars and fifty cents (\$2.50) for the first 10 pages and fifteen cents (\$0.15) for each page thereafter at the time of adoption of this Rule.

*Statutory Authority G.S. 17E-4.*

**.0903 CERT: INSTRUCTORS FOR DETENTION OFFICER CERTIFICATION COURSE**

(a) Any person participating in a commission-accredited Jailer Detention Officer Certification Course as an instruc-

tor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor. A waiver may be granted by the Director upon receipt of a written application to teach in a designated school.

(b) The Commission shall certify Jailer Detention Officer Certification Course instructors under the following categories:

- (1) ~~General Jailer Detention Officer~~ Instructor Certification;
- (2) Professional Lecturer Certification; or
- (3) Limited Lecturer Certification as outlined in Rules .0904, .0906 and .0908 of this Section.

Statutory Authority G.S. 17E-4.

#### **.0904 DETENTION OFFICER INSTRUCTOR CERTIFICATION**

An applicant for ~~General Jailer Detention Officer~~ Instructor Certification shall meet the following requirements:

- (1) Present documentary evidence demonstrating that the applicant:
  - (a) has attended and successfully completed the North Carolina Sheriffs' Education and Training Standards Commission-approved Jail Detention Officer Training Course; or holds a valid general or grandfather certification as a jailer detention officer or correctional officer; and
  - (b) holds General Instructor certification issued by the North Carolina Criminal Justice Education and Standards Commission.
- (2) Persons holding ~~General Jailer Detention Officer~~ Instructor Certification may teach any topical areas of instruction in the Commission-mandated course with the exception of those outlined in 12 NCAC 10B .0908(a)(1) through (7).

Statutory Authority G.S. 17E-4.

#### **.0905 TERMS AND CONDITIONS OF DETENTION OFFICER INSTRUCTOR CERTIFICATION**

(a) An applicant meeting the requirements for certification as a ~~General Jail Detention Officer~~ Instructor shall, for the first 12 months of certification, be in a probationary status. The ~~General Jail Detention Officer~~ Instructor Certification, probationary status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor will be awarded full ~~General Jail Detention Officer~~ Instructor Certification at the end of the probationary period if the ~~instructor instructor,~~ through application, submits to the Division:

- (1) a favorable recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor satisfactorily taught a minimum of ~~four~~ eight hours in a commission-accredited Jailer Detention Officer Certification Course during his/her probationary year;

or

- (2) a favorable written evaluation by a commission member or staff member based on an on-site classroom evaluation of the probationary instructor in a commission-accredited Jailer Detention Officer Certification Course. Such evaluation will be certified on a commission-approved Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of ~~four~~ eight hours in a commission-accredited Jailer Detention Officer Certification Course during his/her probationary ~~year, year; and~~ documentation that certification required in 12 NCAC .0904(1)(b) remains valid.
- (3) documentation that certification required in 12 NCAC .0904(1)(b) remains valid.

(c) ~~General Jailer Detention Officer~~ Instructor Certification is continuous so long as the instructor submits to the Division every two years:

- (1) a favorable recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor satisfactorily taught a minimum of ~~four~~ eight hours in a commission-accredited Jailer Detention Officer Certification Course during the previous two year period. The date ~~General full~~ Instructor Certification is originally issued is the anniversary date from which each two year period is figured; or
- (2) a favorable written evaluation by a commission member or staff member based on a minimum ~~four-hour eight hours~~, on-site classroom observation of the instructor in a commission-accredited Jailer Detention Officer Certification ~~Course, Course; and~~ a renewal application to include documentation that certification required in 12 NCAC .0904(1)(b) remains valid.
- (3) a renewal application to include documentation that certification required in 12 NCAC .0904(1)(b) remains valid.

(d) If an instructor does not teach a minimum of ~~four~~ eight hours during each two year period following the awarding of his ~~General Jailer full~~ Jailer Detention Officer Instructor Certification, his/her certification automatically expires, and the instructor must then apply for probationary instructor certification status and must meet all applicable requirements.

Statutory Authority G.S. 17E-4.

#### **.0906 PROFESSIONAL LECTURER CERTIFICATION**

(a) The Commission may issue Professional Lecturer Certification to a licensed attorney-at-law or a person with a law degree to teach ~~the following topics in the Jailer "Legal Aspects of Jail Management and Administration" in the Detention Officer Certification Course, Course.~~

- (1) Civil Liability in the Jail;
- (2) Legal Rights and Responsibilities;
- (3) Legal Aspects of Criminal Investigation.

(b) To be eligible for such certification an applicant shall

present documentary evidence demonstrating that the applicant has:

- (1) graduated from an accredited law school;
- (2) obtained the endorsement of a commission recognized school director who shall:
  - (A) recommend the applicant for certification as a professional lecturer; and
  - (B) describe the applicant's expected participation, topical areas, duties and responsibilities.

*Statutory Authority G.S. 17E-4.*

#### **.0908 LIMITED LECTURER CERTIFICATION**

(a) The Commission may issue a Limited Lecturer Certification to an applicant who has developed specific or special skills by virtue of specific or special training. Limited Lecturer Certification may be issued in the following topical areas:

- (1) First Aid and CPR (~~National Safety Council Course~~);
- (2) Unarmed Self Defense;
- (3) ~~Handling~~ Fire Emergencies in the Jail;
- (4) Medical Care in the Jail;
- (5) Physical Assessment of ~~Jailers~~ Detention Officers.

(b) To be eligible for a Limited Lecturer Certificate for topic areas set forth in Rule .0908(a), the applicant must meet the qualifications as follows:

- (1) First Aid and CPR (~~National Safety Council Course~~): Certified Standard First Aid Instructor with the American Red Cross or a licensed physician, Family Nurse Practitioner, Licensed Practical Nurse (LPN), Registered Nurse (RN), Physician's Assistant, or EMT;
- (2) Unarmed Self Defense; successful completion of N.C. Department of Corrections Specialized Instructor Training - Unarmed Self-Defense; certified by N.C. Criminal Justice Education and Training Standards Commission as specific Corrections Unarmed Self Defense Instructor;
- (3) ~~Handling~~ Fire Emergencies in the Jail: Certified Fire Instructor;
- (4) Medical Care in a Jail: A Licensed Physician, Family Nurse Practitioner, LPN, RN, or EMT, or Physician's Assistant;
- (5) Physical Assessment of ~~Jailers~~ Detention Officers: certified as a Physical Fitness Instructor by the North Carolina Criminal Justice Education and Training Standards Commission.

*Statutory Authority G.S. 17E-4.*

#### **.0909 TERMS AND CONDITIONS OF A LIMITED LECTURER CERTIFICATION**

(a) An applicant meeting the requirements for certification as a Limited Lecturer shall, for the first 12 months of certification, be in a probationary status. The Limited

Lecturer Certification, Probationary Status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor will be eligible for full Limited Lecturer status at the end of the probationary period if the instructor, through application, submits to the Commission:

- (1) a favorable recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor taught at least four hours in ~~one or more~~ each of the topics for which Limited Lecturer Certification, Probationary Status was granted. Such instruction must have occurred in a commission-accredited ~~jailer detention officer~~ training course during the probationary period. The results of the student evaluation must be considered by the school director when determining the recommendation; or
- (2) a favorable written evaluation by a commission or staff member, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited ~~jailer detention officer~~ training course. Such evaluation must be certified on a commission-approved Instructor Evaluation Form completed ~~for one or more of the topics~~ where the probationary instructor taught a minimum of four hours in each topic for which Limited Lecturer Certification, Probationary Status was granted; and
- (3) documentation that all other certifications required in 12 NCAC 10B .0908 remain valid.

(c) Full Limited Lecturer Certification shall be continuous so long as the lecturer submits to the Division every two years:

- (1) a favorable written recommendation from a school director accompanied by certification on a commission-approved instructor evaluation form that the lecturer successfully taught at least four hours in ~~one or more~~ each of the topics for which Limited Lecturer Certification was granted during the previous two-year period; or
- (2) a favorable written evaluation by a commission member or staff member based on an on-site classroom observation of the lecturer while teaching a minimum of four hours in ~~one or more~~ each of the topics for which Limited Lecturer Certification was granted; and
- (3) a renewal application to include documentation that all other certifications required in 12 NCAC 10B .0908 remain valid.

(d) The date Full Limited Lecturer Certification is originally issued is the anniversary date from which each two-year period is figured.

(e) If a lecturer does not teach a minimum of four ~~hours~~ hours, in each of the topics for which Limited Lecturer Certification was granted, during each two-year period

following the awarding of Full Limited Lecturer Certification, his/her certification automatically expires, and the lecturer must then apply for probationary limited lecturer certification and must meet all applicable requirements.

*Statutory Authority G.S. 17E-4.*

#### **.0910 USE OF GUEST PARTICIPANTS**

The use of guest participants in a delivery of the Jailer Detention Officer Certification Course is permissible. However, such guest participants are subject to the direct on-site supervision of a commission-certified instructor and must be authorized by the school director. A guest participant shall only be used to complement the primary certified instructor of the topic area and shall in no way replace the primary instructor.

*Statutory Authority G.S. 17E-4.*

#### **.0911 SUSPENSION: REVOCATION: DENIAL OF DETENTION OFFICER INSTRUCTOR CERTIFICATION**

(a) The Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(b) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual;
- (5) revoking the individual's certification.

(c) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise; or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans; or
- (4) has failed to follow specific guidelines outlined in the "Jailer Detention Officer Certification Course Management Guide" which is hereby incorporated by reference and shall automatically

include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or

- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
- (6) has otherwise demonstrated instructional incompetence; or
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation.

*Statutory Authority G.S. 17E-4.*

#### **.0912 PERIOD/SUSPENSION: REVOCATION: OR DENIAL OF DETENTION OFFICER INSTRUCTOR CERT**

The period of suspension, revocation or denial of the certification of an instructor pursuant to 12 NCAC 10B .0911 shall be:

- (1) no more than one year where the cause of sanction is:
  - (a) failure to deliver training in a manner consistent with the instructor lesson plans; or
  - (b) failure to follow specific guidelines outlined in the "Jailer Detention Officer Certification Course Management Guide" which is hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
- (c) unprofessional personal conduct or demonstration of instructional incompetence in the delivery of the Jailer Detention Officer Certification Course.
- (2) no more than five years where the sanction is knowingly and willfully obtaining or attempting to obtain instructor certification by deceit, fraud, or misrepresentation.
- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:
  - (a) failure to meet and maintain any of the requirements for qualification; or
  - (b) failure to remain currently knowledgeable in the person's areas of expertise.

*Statutory Authority 17E-4.*

**SECTION .1000 - PROFESSIONAL CERTIFICATE PROGRAM FOR SHERIFFS AND DEPUTY SHERIFFS**

**.1004 INTERMEDIATE LAW ENFORCEMENT CERTIFICATE**

(a) In addition to the qualifications set forth in Rule .1002, applicants for the Intermediate Law Enforcement Certificate shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of law enforcement training experience:

<u>Educational Degrees</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>AA/AS</u>	<u>BS/BA</u>
<u>Years of Law Enforcement Experience</u>	<u>8</u>	<u>6</u>	<u>4</u>	<u>4</u>	<u>2</u>
<u>Minimum Law Enforcement Training Points</u>	<u>20</u>	<u>35</u>	<u>50</u>	<u>24</u>	<u>23</u>
<u>Minimum Total Education and Training Points</u>	<u>39</u>	<u>69</u>	<u>99</u>	<u>24</u>	<u>23</u>

Educational Degrees \_\_\_\_\_ AA/AS \_\_\_\_\_ AB/BS \_\_\_\_\_

Years of Law Enforcement Experience \_\_\_\_\_ 8 6 4 4 \_\_\_\_\_ 2

Minimum Law Enforcement Training Points \_\_\_\_\_ 20 35 50 24 \_\_\_\_\_ 23

Minimum Total Education and Training Points \_\_\_\_\_ 39 69 99 24 \_\_\_\_\_ 23

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the recognized national accrediting body, or the state university of the state in which the institution is located.

*Statutory Authority G.S. 17E-4.*

**.1005 ADVANCED LAW ENFORCEMENT CERTIFICATE**

(a) In addition to the qualifications set forth in Rule .1002, applicants for the Advanced Law Enforcement Certificate shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of law enforcement experience:

<u>Educational Degrees</u>	<u>None</u>	<u>None</u>	<u>AA/AS</u>	<u>BS/BA</u>	<u>GRAD/PRO</u>
<u>Years of Law Enforcement Experience</u>	<u>12</u>	<u>9</u>	<u>9</u>	<u>6</u>	<u>4</u>
<u>Minimum Law Enforcement Training Points</u>	<u>35</u>	<u>50</u>	<u>33</u>	<u>27</u>	<u>23</u>
<u>Minimum Total Education and Training Points</u>	<u>69</u>	<u>99</u>	<u>33</u>	<u>27</u>	<u>23</u>

Educational Degrees	AA/AS		AB/BS		GRAD./PRO.
Years of Law Enforcement Experience	12	9	9	6	4
Minimum Law Enforcement Training Points	35	50	33	27	23
Minimum Total Education and Training Points	69	99	33	27	23

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the appropriate recognized accrediting body, or the state university of the state in which the institution is located.

Statutory Authority G.S. 17E-4.

## SECTION .1200 - PROFESSIONAL CERTIFICATE PROGRAM FOR DETENTION OFFICERS

### .1201 PURPOSE

In order to recognize the level of competence of ~~jailers~~ detention officers serving the Sheriffs' departments of North Carolina, to foster increased interest in college education and professional law enforcement training programs and to attract highly qualified individuals into a law enforcement career, the North Carolina Sheriffs' Education and Training Standards Commission established the Professional Certificate Program for ~~Jailers~~ Detention Officers.

Statutory Authority G.S. 17E-4.

### .1202 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the ~~jailer~~ detention officer professional awards, a ~~jailer~~ detention officer shall first meet the following preliminary qualifications:

- (1) Be a ~~jailer~~ detention officer who holds valid general or grandfather certification. A ~~jailer~~ detention officer serving under a probationary certification is not eligible for consideration.
- (2) The ~~jailer~~ detention officer shall be familiar with and subscribe to the Law Enforcement Code of Ethics.
- (3) Employees of a North Carolina Sheriff's Department who have previously held general or grandfather ~~jailer~~ detention officer certification but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the Professional Certificate Program. Eligibility for this exception requires continuous employment with the sheriff's department from the date of promotion or transfer from a certified position to the date of application for a professional certificate.
- (4) Only training and/or experience gained in an officer's area of expertise will be eligible for application to this

program.

(b) Certificates are awarded based upon a formula which combines formal education, training, and actual experience as a jailer detention officer. Points are computed in the following manner:

- (1) Each semester hour of college credit shall equal one point and each quarter hour shall equal two thirds of a point;
- (2) Twenty classroom hours of commission-approved training shall equal one point;
- (3) Only experience as a member of a law enforcement agency or equivalent experience shall be acceptable for consideration;
- (4) Applicants holding degrees will not be awarded additional points for those degrees and must instead meet the training point requirements of this Section through completion of training in the field of jails or corrections.

*Statutory Authority G.S. 17E-4.*

### **.1203 BASIC DETENTION OFFICER PROFESSIONAL CERTIFICATE**

In addition to the qualifications set forth in Rule .1202, an applicant for the Basic Jailer Detention Officer Professional Certificate shall:

- (1) have no less than one year of service; and
- (2) have completed an accredited Jailer Detention Officer Certification Course; or
- (3) have completed a minimum of 80 hours of training in the field of jails or corrections.

*Statutory Authority G.S. 17E-4.*

### **.1204 INTERMEDIATE DETENTION OFFICER PROFESSIONAL CERTIFICATE**

(a) In addition to the qualifications set forth in Rule .1202, applicants for the Intermediate Jailer Detention Officer Professional Certificate shall possess or be eligible to possess the Basic Jailer Detention Officer Professional Certificate and shall have acquired the following combination of educational points or degrees, jail detention officer or corrections training points and years of jailer detention officer experience:

<u>Educational Degrees</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>AA/AS</u>	<u>BS/BA</u>
<u>Years of Detention Officer Experience</u>	<u>8</u>	<u>6</u>	<u>4</u>	<u>4</u>	<u>2</u>
<u>Minimum Detention Officer Training Points</u>	<u>6</u>	<u>12</u>	<u>16</u>	<u>24</u>	<u>23</u>
<u>Minimum Total Education and Training Points</u>	<u>13</u>	<u>23</u>	<u>33</u>	<u>24</u>	<u>23</u>

Educational Degrees \_\_\_\_\_ AA/AS \_\_\_\_\_ AB/BS

Years of Jailer Experience \_\_\_\_\_ 8 \_\_\_\_\_ 6 \_\_\_\_\_ 4 \_\_\_\_\_ 4 \_\_\_\_\_ 2

Minimum Jailer Training Points \_\_\_\_\_ 6 \_\_\_\_\_ 12 \_\_\_\_\_ 16 \_\_\_\_\_ 24 \_\_\_\_\_ 23

Minimum Total Education and Training

Points 13 23 33 24 23

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the recognized national accrediting body, or the state university of the state in which the institution is located.

Statutory Authority G.S. 17E-4.

**.1205 ADVANCED DETENTION OFFICER PROFESSIONAL CERTIFICATE**

(a) In addition to the qualifications set forth in Rule .1202, applicants for the Advanced ~~Jailer~~ Detention Officer Professional Certificate shall possess or be eligible to possess the Intermediate ~~Jailer~~ Detention Officer Professional Certificate and shall have acquired the following combination of educational points or degrees, ~~jail~~ detention officer or corrections training points and years of ~~jailer~~ detention officer experience:

<u>Educational Degrees</u>	<u>None</u>	<u>None</u>	<u>AA/AS</u>	<u>BS/BA</u>	<u>GRAD/PRO</u>
<u>Years of Detention Officer Experience</u>	<u>12</u>	<u>9</u>	<u>9</u>	<u>6</u>	<u>4</u>
<u>Minimum Detention Officer Training Points</u>	<u>12</u>	<u>16</u>	<u>27</u>	<u>26</u>	<u>26</u>
<u>Minimum Total Education and Training Points</u>	<u>23</u>	<u>33</u>	<u>27</u>	<u>26</u>	<u>26</u>

Educational Degrees AA/AS AB/BS GRAD./PRO.

Years of Jailer Experience 12 9 9 6 4

Minimum Jailer Training Points 12 16 27 26 26

Minimum Total Education and Training Points 23 33 27 26 26

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the appropriate recognized accrediting body, or the state university of the state in which the institution is located.

Statutory Authority G.S. 17E-4.



**TITLE 15A - DEPARTMENT OF ENVIRONMENT,  
HEALTH, AND NATURAL RESOURCES**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Coastal Resources Commission intends to amend rules cited as 15A NCAC 7B .0101, .0201, .0206, .0212 - .0216, .0401 - .0406, .0501 - .0505, .0507; adopt rules cited as 15A NCAC 7B .0202 - .0204, .0207, .0210 - .0211, .0506 and repeal rules cited as 15A NCAC 7B .0205, .0208 - .0209.

**Proposed Effective Date:** December 1, 1995.

**A Public Hearing** will be conducted at 4:00 p.m. on September 28, 1995 at the Sea Trail Plantation, Sunset Beach, North Carolina.

**Reason for Proposed Action:** Local governments in the 20-county coastal area are required by statute to prepare and update local land use plans according to state guidelines adopted by the N.C. Coastal Resources Commission (CRC). The guidelines (15A NCAC 7B) provide a basic framework for the plans and standards for CRC certification. Revisions to the guide lines are made every five years to coincide with the five-year update of each local plan.

**Comment Procedures:** All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than September 28, 1995. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings for the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Ms. Kris M. Horton, Division of Coastal Management, Post Office Box 27687, Raleigh, North Carolina 27611-7687, (919) 733-2293.

**Fiscal Note:** These Rules affect the expenditures or revenues of state and local government funds.

**CHAPTER 7 - COASTAL MANAGEMENT**

**SUBCHAPTER 7B - LAND USE PLANNING  
GUIDELINES**

**SECTION .0100 - INTRODUCTION TO LAND USE  
PLANNING**

**.0101 PURPOSE**

(a) The Coastal Area Management Act of 1974 establishes a cooperative program of coastal area management between local governments and the state. Land use planning lies at the center of local government's involvement, as it gives the local leaders an opportunity and responsibility to establish and enforce policies to guide the development of their

community. While regulations, land acquisition, education and other management tools must continue to play an important role, effective local land use planning offers the best chance for developing a common vision and goals for the future that balance the economic development and resource protection necessary for a healthy coast.

(b) Land use planning provides opportunities for careful technical analysis of the implications of various development alternatives. It allows meaningful involvement of citizens in discussing the future of their community. It is a chance for local elected officials to make clear public policy choices for the future that help guide public and private investments. It is an important tool for effectively addressing the many complicated issues that face areas with high growth as well as those areas that are economically distressed and in great need of new employment opportunities.

(c) ~~(b)~~ The purpose of these state guidelines is to assist local governments in each of the 20 coastal counties with the preparation of their own individual ~~land use plans.~~ Land Use Plans. Each county and ~~the municipalities within the coastal counties are~~ municipality is encouraged to develop a plan which reflects the desires, needs and best judgment of its citizens. ~~The land use plans when~~ Once approved by the Coastal Resources Commission, the local Land Use Plan ~~become~~ becomes a part of the North Carolina Coastal Management Plan, ~~for the protection, preservation, orderly development and management of the coastal area of North Carolina which is the primary objective of the Coastal Area Management Act of 1974.~~

(d) ~~(e)~~ This Subchapter also ~~is intended to set~~ sets forth general standards for use by the Commission in reviewing and considering local ~~land use plans~~ Land Use Plans. These standards of review are intended to clarify the requirements of certain portions of the "State Guidelines for Local Planning" and ~~are intended to set forth a basic format for the plans. These standards of review will be~~ are considered by the Commission in determining whether to approve ~~or disapprove~~ local ~~land use plans~~ Land Use Plans. The Commission, in its review, ~~will also take into account all other considerations regarding~~ considers submission dates, content, and similar matters as outlined in this Subchapter.

(e) Land development generally takes place as the result of a series of decisions by private individuals and government. If left entirely to chance, the resulting pattern of development in a locality may not be in the best interest of the overall community. In order to promote community interest for both present and future generations, a Land Use Plan shall be developed, adopted and kept current by local governments in the coastal area.

(f) The Land Use Plan is a framework that guides local leaders as they make decisions affecting development. Businesses, investors, new residents and other private individuals, as well as other levels of government, also use the plan to guide their land use decisions. Use of the plan by these groups leads to more efficient and economical provision of public services, protection of natural resources, sound economic development, and protection of public

health and safety.

(g) Local governments, through the land use planning process, address issues and adopt policies that guide the development of their community. Many decisions affecting development are made by other levels of government, and local policies must consider and be consistent with established state and federal policies. Most development-related decisions, however, are primarily of local concern. Policies which address the type of development to be encouraged, the density and patterns of development, and the methods of providing public access to beaches and waterfronts are examples of these local Land Use Plan, other levels of government will follow local policies in their actions that affect those issues. State and federal agencies will use the local Land Use Plans and policies in making project consistency, funding and permit decisions.

Statutory Authority G.S. 113A-110; 113A-124.

## SECTION .0200 - LAND USE PLAN

### .0201 CONTENTS OF THE LAND USE PLAN

(a) ~~Land development generally takes place as the result of a series of decisions by private individuals and government. If left entirely to chance, the resulting pattern of development in a locality may well not be in the best overall community interest. In order to promote this community interest for both present and future generations, a land use plan is to be developed, adopted and kept current by the local governments in the coastal area. The Land Use Plan shall contain the following basic elements:~~

- (1) Executive Summary [not applicable to Sketch Plans];
- (2) Introduction;
- (3) Goals and Objectives;
- (4) Data Collection and Analysis;
- (5) Present Conditions;
- (6) Constraints;
- (7) Estimated Demands;
- (8) Policy Statements;
- (9) Land Classification;
- (10) Intergovernmental Coordination and Implementation; and
- (11) Public Participation.

These ~~four~~ 11 elements represent a minimum level of planning necessary to fulfill the objectives of the Coastal Area Management Act. Counties and municipalities are encouraged to use these minimum guidelines as a foundation from which to establish a more comprehensive planning and management process. The ~~land use plan itself~~ Land Use Plan should be a clear and simple document, simple, clear plan. The format and organization of the plan should enable users to find needed items quickly and easily. ~~The Each~~ The local government should ensure that its ~~land use plan~~ Land Use Plan meets the substantive requirements of this Section. ~~Section, and still is not unnecessarily bulky, wordy, etc.~~

(b) ~~The land use plan is a framework that will guide local leaders as they make decisions affecting development.~~

~~Private individuals and other levels of government will also use the plan to guide their land use decisions. Use of the plan by these groups will lead to the more efficient and economical provision of public services, the protection of natural resources, sound economic development, and the protection of public health and safety. Small municipal governments that are not experiencing significant or rapid change or that are completely platted and know the upper limits of buildout may choose to develop a "Sketch" Land Use Plan or Update, with the concurrence of the Division of Coastal Management.~~

- (1) While Sketch Plans must contain the minimum requirements called for in Paragraph (a) of this Rule, the level of data collection and analysis is generally much less than that for a full-sized plan.
- (2) Sketch Plans should be clear, concise and easily understood. Sketch Plans may be produced in a foldout format with the narrative on one side and the required graphics such as the existing land use and land classification maps on the other side. Sketch Plans may also be produced in loose-leaf format or some other more simplified format to facilitate subsequent updates.
- (3) The intent of a Sketch Plan is to provide a document that meets the substantive needs of the local government without overburdening the community with a cumbersome document that has limited use. In developing a Sketch Plan the local government should also recognize that the planning process will be simpler as many issues dealt with in a full-sized Plan will not apply.
- (4) Sketch Plans do not diminish the importance of the planning process to the community, they simply acknowledge that the municipality does not have the full range of natural resources and economic development pressures as those local governments which produce full-sized Land Use Plans or Updates.

(c) ~~Local governments, through the land use planning process, address issues and adopt policies that guide the development of their community. Many decisions affecting development are made by other levels of government, and local policies must take account of and coincide with established state and federal policies. Most decisions, however, are primarily of local concern. By carefully and explicitly addressing these issues, other levels of government will follow local policies that deal with these issues. State and federal agencies will use the local land use plans and policies in making project consistency, funding and permit decisions. Policies which consider the type of development to be encouraged, the density and patterns of development, and the methods of providing beach access are examples of these local policy decisions.~~

(d) ~~The land use plan shall contain the following basic elements:~~

- (1) ~~a summary of data collection and analysis,~~
- (2) ~~an existing land use map,~~

(3) ~~policy discussion;~~

(4) ~~a land classification map.~~

(e) ~~Small municipal governments that are not experiencing significant or rapid growth should develop a sketch Land Use plan or update. Sketch plans must contain the four minimum requirements called for in Paragraph (d) of this Rule, however; sketch plans should be abbreviated and easily read and understood by its citizens. Sketch plans can be produced in a foldout format with the narrative on one side and graphics such as the existing land use and land classification maps on the other side. The intent of a sketch plan is a document that meets the substantive need of the small local government, but does not burden the community with a large, cumbersome, unusable document.~~

Statutory Authority G.S. 113A-107(a); 113A-124.

## **.0202 EXECUTIVE SUMMARY**

An executive summary shall be prepared and included as an introduction to the Land Use Plan, or as a separate document. In either case, it shall be suitable for distribution throughout the planning area. The executive summary shall contain a summary of the land use issues which will affect the community during the planning period, the policies which the local government has selected to address those issues, and a land classification map. An executive summary is not required for a Sketch Land Use Plan.

Statutory Authority G.S. 113A-107(a); 113A-124.

## **.0203 INTRODUCTION**

This Section of the Land Use Plan shall explain to the general public the specific reason for preparing a CAMA Land Use Plan. The Division of Coastal Management will provide each local government with suggested language for this Section of the plan.

Statutory Authority G.S. 113A-107(a); 113A-124.

## **.0204 GOALS AND OBJECTIVES**

The Goals and Objectives of the Land Use Plan shall be listed in this Section. They should provide local application of CAMA goals.

Statutory Authority G.S. 113A-107(a); 113A-124.

## **.0205 RELATIONSHIP OF POLICIES AND LAND CLASSIFICATION**

~~After preparing a land classification map, each local government shall discuss within their plan the manner in which the policies developed under Rule .0203 shall be applied to each of the land classes. In addition, each local plan shall describe the types of land uses which are appropriate in each class.~~

Statutory Authority G.S. 113A-107(a); 113A-124.

## **.0206 .0202 DATA COLLECTION AND ANALYSIS**

(a) Establishment of Information Base.

(1) ~~The data collection and analysis items detailed in this Rule are designed to~~ The first basic element of the Land Use Plan is a presentation of pertinent local and regional data and a thorough analysis of those data. This information should establish the information base necessary to make local policy choices about future land use and development in the community. The guidelines for data collection and analysis have been formulated so as not to place an unnecessary burden on the local planning resources. The Division of Coastal Management will provide information on population, natural resources, water quality, economic activity and transportation infrastructure for counties and, where available, for municipalities and for each small watershed in the planning jurisdiction. Other information needs can generally be fulfilled by utilizing existing local plans and studies, including the previous Land Use Plan Update, as well as information provided by regional planning bodies, bodies and state agencies. Those counties and municipalities Local governments desiring to be more detailed or comprehensive than these guidelines suggest are encouraged to do so.

(2) ~~The process suggested by the~~ for data collection and analysis requirements of this Rule shall begin ~~begin~~ begin with an examination of ~~the present situation conditions.~~ An estimate is then made of what land use demands are likely to be placed on the planning area during the ensuing, not to exceed, 5 to ten 10- year period, based upon population and economic projections and upon local policies. The implications of the projected future demands are then examined and balanced against the suitability of the lands within the local government's jurisdiction for development and the capability of government to provide basic public services and facilities. This analysis should include the number of subdivisions and lots approved and building permits issued since the last plan. The Each local government should analyze how anticipated development will affect the need for services such as water, sewer, fire and police protection, schools, etc. solid waste disposal, landfill life, transportation, parks, and adequacy of local administrative ability to carry out these services. The local government shall discuss these strong relationships as part of policy development. Particular attention should be paid to situations where local government does not provide water or sewer and these services are provided privately. In the absence of public systems, potable water availability and soils suitability for sewage disposal etc. must be considered. This analysis should be linked closely with

policy development and land classification in each plan. This analysis of the capability of the local government to provide the anticipated services and the suitability of lands for projected growth should be clearly reflected in the land use policy and land classification sections in the plan.

- (3) The summary of the data collection and analysis prepared as part of the land use plan shall indicate the manner in which the data was assembled and analyzed along with a statement of the major conclusions. This summary shall also provide an index showing where more detailed information can be found in technical appendices to the plan. Compliance with this element requires each local government to analyze how effectively it has implemented its policies as contained in its current plan of record. This evaluation should include statements as to what improvements the local government intends to make in this plan update. This evaluation should occur at the beginning of the planning process so as to provide a foundation upon which to build new policies as the plan update is developed. This analysis should include the number of subdivisions and lots approved and building permits issued since the last plan. Data collection shall include information for the planning jurisdiction as a whole. Where applicable, it shall also include information for each small watershed. A map of the 14-digit hydrologic units delineated by the U.S. Natural Resources Conservation Service will be provided by the Division of Coastal Management. At a minimum, small watershed boundaries shall be shown on all maps included in the plan, and existing land uses shall be summarized for each watershed. Emphasis should be placed on identifying those small watersheds in which water quality merits particular attention.
- (4) The Land Use Plan shall include a summary of the data collection and analysis, indicating the manner in which the data were assembled and evaluated along with a statement of major conclusions. This summary shall also provide an index showing where more detailed information can be found in technical appendices to the plan.
- (5) The Land Use Plan shall also include an analysis of how effectively the local government has implemented the local policies contained in its previous Land Use Plan and what improvements it intends to make in this plan update. This evaluation should occur at the beginning of the update process so as to provide a foundation upon which to develop new policies. This evaluation may be included as an introduction to the policy section called for in Rule .0212 of this Section or as an appendix to the plan.
- (6) Watersheds are useful in relating land use planning to environmental management objectives such

as water quality protection, fisheries productivity, and habitat management. Because watersheds are defined by the areas within which water drains to a particular water body, they are appropriate units for considering relationships between land use and surface water quality. Small watershed units should be used as the basis for the aspects of Land Use Plans that relate to water quality. River basin plans developed by N.C. Division of Environmental Management provide a regional context for this watershed assessment.

- (7) The 14-digit hydrologic units delineated by the U.S. Natural Resource Conservation Service, are the largest watershed units appropriate for local watershed-based planning. The Division of Coastal Management will provide maps of these watershed boundaries to local governments for use in Land Use Plans. Local governments may use smaller watershed units if they are more useful for meeting local objectives.
- (8) Local governments are encouraged to use small watersheds as a base for surface water quality management. In particular, those watersheds where water quality appears to be either degrading or very high (such as Outstanding Resource Waters), should be examined with the intent of managing land-use through Land Classification System and by land use regulations. The Division of Coastal Management and Division of Environmental Management (DEM) will provide technical assistance to the extent practical in the consideration of DEM Basinwide Plans, the relationship between land-use patterns and water quality, and the development of land-use management controls.

(b) Present Conditions.

- (1) Present Population and Economy. A brief analysis of the local population and economy shall be made utilizing existing information. Particular attention should be given to the impact of seasonal populations and to economic activities which affect coastal land and water resources.
- (2) Existing Land Use. Existing land use shall be mapped and analyzed, with particular attention given to:
  - (A) significant land and water use compatibility problems;
  - (B) major problems that have resulted from unplanned development, and that have implications for future land and water use;
  - (C) an identification of areas experiencing or likely to experience changes in predominant land uses including agricultural and forestry land being converted to other uses;
  - (D) during plan development local governments are encouraged to use small scale, high detail maps. These maps should be retained for local government use. Maps included in the

land use plans should be of an appropriate scale and quality to be easily interpreted and should contain a synthesis of data gathered during plan development. Existing water conditions including DEM stream classifications, the location of primary and secondary nursery areas, ORW's and other features such as oyster and clam beds, eel grass etc. should be included in this map synthesis.

(3) **Current Plans, Policies and Regulations.** This element shall contain:

(A) a listing and summary of existing plans and policies having significant implications for land use, including at least transportation plans, community facilities plans, utilities extension policies, open space and recreation policies, and prior land use plans and policies. This listing and summary shall distinguish between studies and other background documents and plans, ordinances and policies which have been adopted and are currently being used and followed. This should also include statements as to whether the local government intends to participate in programs such as the National Flood Insurance Program, etc.;

(B) a listing and brief description of the means for enforcement of all existing local land use regulations; the following regulations shall be discussed, where applicable: zoning, subdivision, floodway, building, septic tank, historic district, nuisance, dune protection, sedimentation, and environmental impact ordinances, codes or regulations, stormwater management plans, mobile home park, group housing and PUD ordinances. The local government should also review the relationship of its local ordinances with its land classification map and local policies and identify and correct conflicts. Specific permitted land uses, densities and lot sizes should be discussed.

(c) **Constraints; Land Suitability.** An analysis shall be made of the general suitability of the undeveloped lands as identified on the existing land use map within the planning area for development, with consideration given to the following factors: physical limitations for development, fragile areas, and areas with resource potential. These factors shall be analyzed, and where possible mapped, based upon the best information available. The major purpose of this analysis is to assist in preparing the land classification map.

(1) **Physical Limitations for Development.** An identification shall be made of areas likely to have conditions making development costly or

causing undesirable consequences if developed. The following areas shall be identified:

- (A) hazard areas, including man-made hazards (for example, airports, tank farms for the storage of flammable liquids, nuclear power plants) and natural hazards (for example, ocean erodible areas, and flood hazard areas below 5-foot mean high water line that would be susceptible to sea level rise); this identification shall include the specific sources of the data such as flood insurance maps, county soils maps, etc.;
- (B) areas with soil limitations, including the following:
  - (i) areas presenting hazards for foundations such as non-compacting soils;
  - (ii) shallow soils;
  - (iii) poorly drained soils;
  - (iv) areas with limitations for septic tanks including both areas that are generally characterized by soil limitations, but within which small pockets of favorable soils do exist; and areas where soil limitations are common to most of the soils present;
- (C) sources and estimated quantity and quality of water supply, including:
  - (i) groundwater recharge areas (bedrock and surficial);
  - (ii) public water supply watershed;
  - (iii) wellfields;
- (D) areas where the predominant slope exceeds 12 percent or areas with a high erosion potential where bulkheads may be constructed in the future.

(2) **Fragile Areas.** An identification shall be made of those areas which could easily be damaged or destroyed by inappropriate or poorly planned development. The following shall be considered (as defined in 15A NCAC 7H): coastal wetlands; sand dunes along the outer banks; ocean beaches and shorelines; estuarine waters and estuarine shorelines; public trust waters; complex natural areas; areas that sustain remnant species; areas containing unique geologic formations; registered natural landmarks; and others such as wooded swamps, prime wildlife habitats, scenic and prominent high points, archeologic and historic sites; etc. Special emphasis should be given to other fragile areas such as maritime forests, "404" wetlands, lands identified through the U.S. Fish and Wildlife National Wetlands Inventory, areas identified through EHNR's Natural Heritage Program; and other areas which are not offered protection by existing rules.

(3) **Areas with resource potential, including:** productive and unique agricultural lands; potentially

valuable mineral sites; publicly owned forests, parks, fish and gamelands, and other non-intensive outdoor recreation lands; privately owned wildlife sanctuaries. Prime farmland shall be identified consistent with the Governor's Executive Order Number 96 promoting inter-agency coordination toward prime farmland preservation.

(d) ~~Constraints; Carrying Capacity Analysis.~~ An examination of the following indicators should be made to assist the local government in evaluating its ability to provide basic community services to meet anticipated demand, as well as pointing out deficiencies which will need future attention and efforts:

- (1) ~~existing water and sewer service areas; including private systems;~~
- (2) ~~the design capacity of the existing water treatment plant, sewage treatment plant, schools, landfill or other solid waste disposal facility, police and fire protection capability, public administrative ability, primary roads, bridges and general transportation system adequacy;~~
- (3) ~~the level (as a percentage) at which the existing water treatment plant, sewage treatment plant, schools, and primary roads are currently utilized;~~
- (4) ~~the capacity of community facilities to supply existing and anticipated demand. Counties containing barrier islands and municipalities therein shall use the peak seasonal population as a basis for public facility planning and policy development. Past summer season usage data should be used in predicting future needs and demand.~~

(e) ~~Estimated Demand:~~

- (1) ~~Population and Economy.~~ A population estimate for the upcoming 10 years shall be made and used as the basis for determining land and facilities demand and for classifying land areas. Ten year population projections will be provided by the Department of Administration for use in making population estimates. Projections will be provided for counties and those cities and towns having a population greater than 2,500. Accurate projections for those areas with a population of less than 2,500 are not available and must be developed by the local planning unit. The projections provided by the Department of Administration are based on prior trends with annual updates. The local government may wish to use these trend projections as its population estimates or to modify them to include additional factors such as:

- (A) ~~seasonal population.~~ Counties containing barrier islands and municipalities therein shall use peak seasonal population as a basis for public facility planning and policy development.

- (B) ~~local objectives concerning growth.~~ To meet the intent of this item local governments shall consider local plans and policies concerning growth as identified in Rules .0202(b)(3) and .0203 of this Section.

- (C) ~~foreseeable social and economic change to include an evaluation of the proportions of the local economy devoted to tourism, retail, construction and professional trades to illustrate the changes occurring.~~

The Department of Administration population model is capable of taking into account some of these considerations and should be used where possible when such further refinement is desired. If such refinement causes a significant difference between the Department of Administration population projections and the local population estimate, the community shall explain the reason for the difference. The Coastal Resources Commission must approve such an estimate.

- (2) ~~Future Land Need.~~ To estimate the need for land for residential structures and related services, the population predictions must be examined in relation to present and future types of land development. The estimated population increase should be distributed at density levels which have been stated in the policies described in .0203 of this Section and in line with the land classification system outlined in .0204 of this Section. These policies shall consider both past development densities and patterns and the desired future density and type of development.
- (3) ~~Community Facilities Demand.~~ Consideration shall be given to new facilities which will be required by the estimated population growth and the densities at which the land is to be developed. Features such as landfills, road widenings, bridges, etc. should be considered in order to meet the intent of this item.

Statutory Authority G.S. 113A-107(a); 113A-124.

## **.0207 PRESENT CONDITIONS**

(a) Present Population and Economy. A brief analysis of the local population and economy shall be made utilizing existing information. Particular attention should be given to the impact of seasonal populations and to economic activities which affect coastal land and water resources.

(b) Existing Land and Water Uses. Existing land and water uses shall be mapped. The maps included in the Land Use Plan should be of an appropriate scale and quality for easy interpretation and should contain a synthesis of data gathered. Detailed maps should be prepared during plan development and retained for local government use as working documents. The maps used during plan development should include existing water conditions, including DEM stream classifications, water quality use support (as identified by DEM), watershed boundaries, wetlands,



primary and secondary nursery areas, Outstanding Resource Waters, and other features such as shellfish beds, beds of submerged aquatic vegetation, and natural heritage protection sites. In addition, the maps should show the location of existing development and the location of major subdivisions that have been platted but not yet developed. Existing land uses should be considered as the basis for the land classification map called for in Rule .0213 of this Section. In this analysis, particular attention may be given to:

- (1) significant land use compatibility problems;
  - (2) significant water use compatibility problems including those identified in any water supply plan appendix and those identified in the applicable DEM basinwide plan;
  - (3) significant problems that have resulted from unplanned development and that have implications for future land use, water use, or water quality;
  - (4) an identification of areas experiencing or likely to experience changes in predominant land uses, including agricultural and forestry land being converted to other uses and previously undeveloped shoreline areas where development is now occurring;
  - (5) significant water quality conditions and the connection between land use and water quality.
- (c) Current Plans, Policies and Regulations. This element shall contain:

- (1) a listing and narrative summary of existing plans and policies having significant implications for land use, including where applicable transportation plans, community facilities plans, water supply plans, solid waste plans, utilities extension policies, open space and recreation policies, and prior Land Use Plans and policies. This listing and summary shall distinguish between studies and other background documents and local ordinances or policies that have been adopted and are currently in use;
- (2) a listing of all existing local land use regulations and ordinances and a brief description of the means for their enforcement (both staffing arrangements and the adequacy of ordinances themselves), such as zoning, subdivision, floodway, building, septic tank, historic district, nuisance, dune protection, wetland protection, sedimentation, environmental impact, stormwater management, mobile home park, group housing and planned unit development (PUD). The local government should also review the relationship of its local regulations and ordinances with its Land Use Plan policies and land classification map, and identify conflicts, inconsistencies and possible solutions. Specific permitted land uses, densities and lot sizes should be discussed.

*Statutory Authority G.S. 113A-107(a); 113A-124.*

#### **.0208 CONTENTS OF LAND USE PLAN**

(a) ~~The land use plan shall contain all elements described in Rules .0201—.0207 of this Section.~~

(b) ~~The land use plan shall be presented in the following general format:~~

- (1) ~~a summary of data collection (as described in Rule .0202 of this Section);~~
- (2) ~~an analysis of all data collected;~~
- (3) ~~statements of local policy on those land use planning issues which will affect the community during the 10 year planning period;~~
- (4) ~~a land classification map;~~
- (5) ~~a discussion of the relationship between the local government's adopted policies and the land classification map;~~
- (6) ~~a discussion of how adjacent governments' plans were considered in the preparation of the land use plan.~~

*Statutory Authority G.S. 113A-110; 113A-124.*

#### **.0209 CONTENTS OF THE EXECUTIVE SUMMARY**

~~If an executive summary is prepared as a part of the land use plan, it shall contain a summary of the land use issues which will affect the community during the planning period and the policies which the local government has adopted to address these issues.~~

*Statutory Authority G.S. 113A-110; 113A-124.*

#### **.0210 CONSTRAINTS**

(a) Land Suitability. An analysis shall be made of the general suitability for the development of undeveloped lands as identified on the map of existing land and water uses, with consideration given to the following factors: physical limitations for development, watersheds with impaired water quality, fragile areas, and areas with resource potential. The major purpose of this analysis is to assist in preparing the land classification map and, where applicable, in identifying which small watersheds have significant limitations or opportunities for development.

- (1) Physical Limitations for Development. Identify areas likely to have conditions making development costly or that would cause undesirable consequences if developed. The following areas shall be identified:
  - (A) major hazard areas, including man-made hazards (for example, airports, tank farms for the storage of flammable liquids, nuclear power plants) and natural hazards (for example, ocean hazard areas, flood hazard areas, and areas that would be susceptible to sea level rise); reference the specific sources of the data such as flood insurance rate maps, county soils maps, etc.;

(B) areas with soil limitations, including the following:

- (i) areas presenting hazards for foundations such as non-compacting soils;
- (ii) shallow soils;
- (iii) poorly drained soils;
- (iv) areas with limitations for septic tanks including both areas that are generally characterized by soil limitations, but within which small pockets of favorable soils do exist; and areas where soil limitations are common to most of the soils present;

(C) where the information is readily available, water supply areas and the estimated quantity and quality of the water supply [unless discussed in a water supply plan appendix], including:

- (i) groundwater recharge areas (bedrock and surficial),
- (ii) public water supply watershed,
- (iii) public and community supply wellfields;

(D) areas where the predominant slope exceeds 12 percent;

(E) shoreline areas with a high erosion potential where bulkheads may be constructed in the future; and

(F) small watersheds which drain into water bodies classified or designated Nutrient Sensitive Waters, Outstanding Resource Waters, Primary Nursery Areas, High Quality Waters, SA Waters, or not-fully-supporting waters.

- (2) Fragile Areas. Based on information provided by the Division of Coastal Management, identify sensitive areas which could easily be damaged or destroyed by inappropriate or poorly-planned development. These shall include Areas of Environmental Concern (AECs) as defined in 15A NCAC 7H and other areas that could qualify for AEC designation under 15A NCAC 7H .0500, including coastal wetlands, sand dunes along the Outer Banks, ocean beaches and shorelines, estuarine waters and estuarine shorelines, public trust waters, complex natural areas, areas that sustain remnant species, areas containing unique geologic formations, and archaeological or historic resources. Special emphasis should be given to other fragile areas such as maritime forests, prime wildlife habitats, scenic areas and prominent high points, archaeological and historic sites, wetlands identified on Division of Coastal Management wetland maps, other wetlands, natural areas identified by EHNHR's Natural Heritage Program, streams identified by the Division of Marine Fisheries as Anadromous Fish Spawning Areas, and other sensitive areas not offered protection by existing Rules. Note that only an identification of fragile

areas is called for here; a discussion of local policies to protect those areas is called for in Rule .0212(1) of this Section.

- (3) Areas with Resource Potential. Identify areas with resource potential, including productive and unique agricultural lands; potentially valuable mineral sites; publicly-owned forests, parks, fish and gamelands, and other non-intensive outdoor recreation lands; and privately-owned wildlife sanctuaries. Prime farmland shall be identified consistent with the Governor's Executive Order Number 96 promoting interagency coordination toward prime farmland preservation.

(b) Community Services Capacity. An examination of community services capacity shall be made to assist the local government in evaluating its ability to provide basic community services to meet anticipated demand, as well as pointing out deficiencies which will need future attention and efforts. The plan shall contain comprehensive analyses of:

- (1) Wastewater Management. This analysis shall project all wastewater treatment needs. It should include the following considerations:

- (A) Estimation of projected sewage treatment needs (including central systems, package treatment plants and septic systems) based upon projected population growth and the population that can be accumulated by the land classifications assigned in accordance with Rule .0213 of this Section. Such needs may not exceed the assimilative capacity of coastal lands, wetlands and waters to absorb point and nonpoint source pollution, including the secondary pollution resulting from growth induced by increased treatment capacity;
- (B) Water conservation and pollution prevention planning to reduce wastewater volume and pollutant concentration at public and private treatment facilities;
- (C) Re-use of treated water as a first alternative where feasible. Plans for land application of wastewater should ensure that application lands do not drain to waters classified for shellfish harvest;
- (D) Pursuit of non-discharge treatment technologies, such as connection to existing treatment facilities, land application or subsurface systems, as a first alternative. (Plans for land application of wastewater would ensure that application lands do not drain to waters classified for shellfishing harvest);
- (E) Regionalization of discharge with best available treatment technology when discharges are necessary;
- (F) Incorporation of small communities with failing septic systems and of small, on-site wastewater treatment facilities (package plants) that frequently malfunction into centralized wastewater systems;



- (G) Targeting of public funds for treatment facilities to low income communities with failing wastewater systems that are causing water quality impairment; and
- (H) Long-term maintenance and monitoring at on-site wastewater facilities.
- (2) Drinking Water Supply. Natural supplies of fresh surface and groundwater are limited in some parts of the coastal area. State legislation now requires all local governments that supply water to prepare plans to identify sources to meet projected needs. Updates of water supply plans should be coordinated to occur simultaneously with updates of the CAMA Land Use Plans. Conclusions of these water supply plans should be summarized in this Section of the plan. The local government's capacity to provide adequate drinking water supplies in light of projected peak population estimates should be evaluated.
- (3) Transportation. Transportation improvements of the next 10 years necessary to meet local and regional peak population estimates shall be evaluated and mapped. To assist in this analysis, the Division of Coastal Management will provide all transportation plans currently under development by the Department of Transportation to local governments. The ability of a local government to conduct a hurricane evacuation shall be determined.
- (4) Other Community Facilities and Services. Considerations of the design capacity of the existing schools, landfill or other solid waste disposal facility, police and fire protection capability, and public administrative ability. Peak seasonal population shall be used as a basis for public facility planning and policy development. Past peak season usage data should be used to predict future needs and demand.

*Statutory Authority G.S. 113A-107(a); 113A-124.*

#### **.0211 ESTIMATED DEMANDS**

(a) Population and Economy. A population estimate for the upcoming 10 years shall be made and used as the basis for determining land and facilities demand and for classifying land areas. Population projections from the Department of Administration will be provided for counties by the Division of Coastal Management for use in making population estimates. The projections are based on prior trends with annual updates. The local government may wish to use these trend projections as its population estimates or to modify them to include additional factors such as:

- (1) seasonal population. The local government shall use peak seasonal population as a basis for most public facility planning and policy development.
- (2) local objectives concerning growth. The local

governments shall consider the local plans and policies concerning growth that are identified pursuant to Rules .0206(d) and .0212 of this Section.

- (3) foreseeable social and economic change. The local government shall evaluate the proportions of the local economy devoted to tourism, retail, construction and professional trades to illustrate social and economic changes.

(b) Future Land Needs. To estimate the need for land for residential structures, commercial uses and related services, the population predictions must be examined in relation to present and future types of land development. The estimated population increase should be distributed at density levels which have been stated in the policies described in Rule .0212 of this Section and in line with the land classification system outlined in Rule .0204 of this Section. These policies shall consider both past development densities and patterns and the desired future density and type of development.

(c) Demand for Community Facilities and Services. Consideration shall be given to new and expanded facilities which will be required by the estimated population growth and the densities at which the land is to be developed. Features such as landfills, road widenings, bridges, water and sewer, police and fire protection, solid waste and schools should be considered in order to meet the intent of this item.

*Statutory Authority G.S. 113A-107(a); 113A-124.*

#### **.0212 ~~.0203~~ POLICY STATEMENTS**

(a) The plan shall contain statements of local policy on those land use issues which will affect the community during the 10 year planning period. This Section will begin with a general vision policy statement describing the type of community that the local government would like to become in the next 10 years. The issues shall include but not be limited to: resource protection, resource production and management, economic and community development, continued public participation and storm hazard mitigation. Policies may be specific to particular small watersheds and may differ among small watersheds with different conditions. Particular emphasis should be given to small watersheds with existing water quality impairment or other unique characteristics identified in the applicable Basinwide Plan or other state or local analysis. Local governments should ensure to the greatest extent possible that there is consistency among individual policies developed in each policy category. Particular attention should be given to individual policies in the resources protection, resources production and economic and community development categories. For example, a resource protection policy to "protect water quality in surface waters" should be reflected in economic and community development policies which would also affect surface water quality. Local governments may include the analysis of previous policy effectiveness called

for in Rule .0202(3)(A)(i) .0206(e) of this Section as a preface to this policy section.

- (1) Resource Protection: To include a basic statement as to the community attitude toward resource protection:

- (A) Local governments shall discuss each of the ~~areas of environmental concern~~ Areas of Environmental Concern (AECs) and other fragile areas located within its jurisdiction and list the types of land uses which it feels are appropriate in each of those areas type of area and the reasons for including each land use type. ~~In the same manner, the physical constraints to development which exist within the planning jurisdiction shall be analyzed [as set forth in .0202(e) of this Section]. Compatible uses for areas with cultural and historic value should also be described. Such questions as the following should be addressed: "What will be the benefits which will accrue to the local government for encouraging development or preservation of these areas?" "What local, state, or federal protection is needed for these areas?"~~ In addition, the local government should identify, discuss and develop policies for issues that are locally significant, but not identified elsewhere in these Rules.

- (B) ~~As~~ At a minimum, the plan shall contain policy statements on the following resource protection issues (if relevant):

- (i) constraints to development (e.g., soils, flood prone areas); to include an explicit discussion of soil suitability/septic tank use;
- (ii) specific local resource development issues relative to areas of environmental concern designated under 15A NCAC 7H; and land uses and development densities in proximity to ORWs;
- (iii) protection of wetlands identified as of the highest functional significance on maps supplied by the Division of Coastal Management (where available);
- (iv) ~~(iii) other hazardous or fragile land areas, including but not limited to other wetlands, freshwater swamps and marshes, maritime forests, peecosins and 404 wetlands, ORW areas, shellfishing waters, water supply areas and other waters with special values, cultural and historic resources, and man-made man-made hazards. This discussion may be in terms of the nomination procedure for areas of environmental concern~~ Areas of Environmental Concern under Section .0500 of 15A NCAC 7H; ~~this discussion should also include local policy development to protect those fragile areas which are not covered by existing rules~~

~~and these policies can also be reflected in land classification and local ordinance;~~

- (iv) ~~hurricane and flood evacuation needs and plans, as specified in Rule .0203(a)(6) of this Section;~~

- (v) means of protection of potable water supply;

- (vi) the use of package treatment plants for sewage treatment disposal can also be listed under economic and community development policies, discussion of package treatment plants should also include consideration of requirements for the ongoing private operation and maintenance of the plant(s) and provisions for assumption of the plant(s) into the public system should the private operation fail;

- (vii) stormwater runoff associated with agriculture, residential development, phosphate or peat mining and their impacts on coastal wetlands, surface waters or other fragile areas;

- (viii) marina and floating home development, moorings and mooring fields, and dry stack storage facilities for boats associated either with or independent of marinas;

- (ix) industrial impacts on fragile areas;

- (x) development of sound and estuarine system islands;

- (xi) restriction of development within areas ~~up to five feet above mean high water~~ that might be susceptible to sea level rise ~~and wetland loss;~~

- (xii) upland excavation for marina basins; ~~and~~

- (xiii) the damaging of existing marshes by bulkhead ~~installation; and installation.~~

- (xiv) water quality problems and management measures designed to reduce or eliminate local sources of surface water quality problems.

- (2) Resource Production and ~~Management:~~ Management. To include a basic statement as to the community attitude toward resource production and management:

- (A) Local governments shall discuss the importance of agriculture, forestry, mining, fisheries and recreational resources to the community. The most productive areas shall be identified and values of protecting these productive areas ~~shall also be discussed. In addition, the local government should identify, discuss and develop policies for issues that are locally significant.~~

- (B) ~~As~~ At a minimum, the plan shall contain policy statements on the following resource production and management issues (if relevant):

- (i) productive agricultural lands;

- (ii) commercial forest lands;
  - (iii) existing and potential mineral production areas;
  - (iv) commercial and recreational fisheries; including nursery and habitat areas, ORW's, and trawling activities in estuarine waters;
  - (v) off-road vehicles;
  - (vi) residential, commercial and industrial land development impacts on any resources; and
  - (vii) peat or phosphate mining's impacts on any resource.
- (3) ~~Economic and Community Development: Development.~~ To include a basic statement as to the community attitude toward growth:
- (A) Local governments shall discuss the types of development which are to be encouraged. In this instance, the term "development" shall include residential, commercial, industrial and institutional development. The plan shall consider the costs and benefits of redevelopment of older areas as well as the creation of new subdivisions or industrial parks. ~~In addition, the capacity of existing facilities (land, utilities, transportation, etc.) to service new developments and the potential for establishing new public support facilities (including costs and financing methods) shall be discussed.~~
  - (B) ~~As At~~ a minimum, the plan shall contain policy statements on the following economic and community development issues (if relevant):
    - (i) types and locations of industries desired (including discussion of specific sites or standards for sites in general) and local assets desirable to such industries;
    - (ii) local commitment to providing services to development;
    - (iii) types of urban growth patterns desired (including policy regarding development away from existing urban clusters);
    - (iv) types, densities, location, units per acre, etc. of anticipated residential development and services necessary to support such development including an assessment of how solid waste disposal will be managed;
    - (v) ~~(iv)~~ redevelopment of developed areas including relocation of structures endangered by erosion, paying particular attention to the extent existing zoning allows more intense redevelopment than current uses;
    - (vi) ~~(v)~~ commitment to state and federal programs ~~in areas (including (for example~~ erosion control, ~~public access,~~ highway improvements, port facilities, dredging, military facilities, housing rehabilitation, community development block grants, housing for low and moderate income level citizens, water and sewer installation, and rural water systems etc.);
- (vii) ~~(vi)~~ assistance to channel maintenance, interstate waterways, and beach nourishment projects (including financial aid, provision of borrow and spoil areas, provision of easements for work);
  - (viii) ~~(vii)~~ energy facility siting and development to include specific reference to electric generating plants, both inshore and outer continental shelf (OCS) OCS exploration or development to address the possibilities of refineries, storage, transshipment and the potential negative environmental effect from blowouts, spills etc.;
  - (ix) ~~(viii)~~ tourism;
  - (x) ~~(i) coastal and estuarine water beach access (which could include urban waterfront access).~~ public beach and waterfront access. Policies on type and location should be based on an inventory of all publicly owned properties, to include street ends appropriate for access development, all privately owned parcels appropriate for access development, and privately owned parcels where access occurs customarily. State standards for beach access locations as expressed in 7M .0303 shall also be considered in site location. These access areas should be indicated on maps in the Land Use Plan and shall provide for the diverse needs of the permanent and peak seasonal populations as well as day ~~visitors; visitors.~~
  - ~~(x) types, densities, location; units per acre etc. of anticipated residential development and services necessary to support such development including the setting aside of or identification of sites for future landfill use.~~
- (C) In addition to specific policy statements on issues listed in this Paragraph, local governments should pay particular attention in policy development to observed land use trends such as: in inland areas significant changes from lower intensity to higher intensity uses, conversion of agricultural and forest uses to residential or commercial, or from forest to agricultural. Land use trends in estuarine, river and sound areas include residential waterfront development and increases in density of waterfront residential uses; marina, moorings, or dry stack facility development and expansion, floating homes and public and private

services provided to support higher intensity uses and the cumulative impact of such trends on water quality. Oceanfront and barrier islands should address the adequacy of existing and planned transportation routes, bridges, water and sewer systems, and other carrying capacity features and local ordinances to accommodate expected and potential changes in land use intensities and overall growth.

- (4) Continuing Public Participation. Local governments shall discuss the means by which public involvement in the ~~land use plan~~ Land Use Plan update will be encouraged. The public involvement policies shall be consistent with the concepts set forth in Rule ~~.0207~~ .0215 of this Section. ~~As~~ At a minimum, the plan shall address the following public participation issues:

- (A) description of means to be used for public education on planning issues;
- (B) description of means to be used for continuing public participation in planning; and
- (C) description of means to be used for obtaining citizen input in developing ~~land use plan~~ Land Use Plan policy statements.

- ~~(5) The Coastal Resources Commission in consultation with the local governments, may specify other specific issues that must be addressed in particular local land use plans and the local government is also encouraged to develop policies on issues that are of particular local importance.~~

- (5) (6) Storm Hazard Mitigation, Post-Disaster Recovery and Evacuation Plans:

- (A) ~~Coastal Storm hazard mitigation policies are required as part of the land use plan. Local governments shall adopt local policies dealing with coastal storm hazard mitigation.~~ The purpose of these policies is to guide the development of the community so that the risk of damage to property and the threat of harm to human life from coastal storms is kept to a minimum level.

- (i) ~~As a part of the plan, the following studies must be done~~ The following information shall be included in the plan:

- (I) A description of the ~~effects of coastal storms the community will be subjected to~~ likely conditions that the community will experience during a coastal storm; e.g. high winds, storm surge, flooding, wave action, erosion, etc.
- (II) A composite hazards map ~~showing the hazardous areas within the planning jurisdiction.~~ The local government should use ~~using~~ the best available information including NFIP flood insurance rate maps and other data from the Division of Emergency Manage-

ment, data, the Eastern N.C. Evacuation Study, AEC data, etc. showing the hazardous areas within the planning jurisdiction; each ~~Each~~ hazardous area should be described in terms of type of hazard that it's likely to be subjected to and the relative severity of risk present.

- (III) An existing land use inventory for each of the most hazardous areas which ~~will portray~~ portrays the amount of existing development at risk ~~for each area.~~ The intent of this provision can be achieved by overlaying each hazard area upon the existing land use map.

- (ii) ~~The following Coastal Storm coastal storm hazard mitigation policies must shall be a part of the land use plan and the following must be considered included in the plan:~~

- (I) Policies intended to mitigate the effects of high winds, storm surge, flooding, wave action, erosion, etc.;
- (II) Policies intended to discourage development, especially high density or large structures in the most hazardous areas;
- (III) Policies dealing with public acquisition of land in the most hazardous areas;
- (IV) Policies dealing with evacuation. While it is recognized that evacuation is the responsibility of county emergency management personnel and the Department of Crime Control and Public Safety, Division of Emergency Management, each ~~land use plan~~ Land Use Plan should consider the impact of the land use and other policies on evacuation problems. The following should be considered: decreasing density so as to decrease the number of people needing to evacuate; requiring that major residential development (including motels, ~~econdes~~ condominiums and subdivisions of over 30 units) provide adequate emergency shelter for their occupants; ensure that new public buildings can be adequately used as shelters; participation in a regional evacuation planning process.

- (B) ~~Post-disaster~~ Post-disaster reconstruction policies are also required as part of the ~~land use plan~~ Land Use Plan in order to guide development during the reconstruction period following a disaster so that the community, as it is rebuilt, is less vulnerable to coastal storms than it was before the disaster. The following should be considered in these policies:

- (i) ~~the~~ The county emergency management

plan, especially the preparation and response sections;

- (ii) ~~local~~ Local policies which will direct reconstruction over a longer period of time;
- (iii) ~~the~~ The establishment of a "recovery task force" to oversee the reconstruction process and any policy issues which might arise after a storm disaster;
- (iv) ~~the~~ The establishment of a schedule for staging and permitting repairs, including the imposition of moratoria, according to established priorities assigned to the restoration of essential services, minor repairs, major repairs and new development; and
- (v) ~~the~~ The establishment of policies for repair ~~and/or~~ or replacement of public infrastructure, including relocation to less hazardous areas.

(6) The Coastal Resources Commission in consultation with the local government, may, at the beginning of the planning process, specify other specific issues that must be addressed in particular local Land Use Plans, and the local government is also encouraged to develop policies on issues that are of particular local importance.

(b) For each of the policy issues listed in Paragraph (a)(1) through (6) of this Rule, the ~~land-use plan~~ Land Use Plan shall contain the following: a discussion of the scope and importance of the issue, alternative policies considered, the policy adopted by the local government ~~for that issue~~, and a description of how the local policy (or group of policies) will be implemented. ~~Local policies should pay particular attention to water quality impacts and the longer term accumulative impacts of development.~~

- (1) Definition of Issues. ~~Each~~ The local government shall consider, with the aid of the planning board and citizen advisory groups, those issues which will affect the community during the 10-year planning period.
- (2) Discussion of Possible Policy Alternatives. Alternative scenarios shall be discussed for each land use issue, based upon different population projections and different types of public policy; ~~shall be discussed in the land-use plan.~~ The costs and benefits to the community shall be analyzed, including cost of providing services and increased revenues from potential development both for the initial action and for the long-term consequences, ~~shall be analyzed.~~
- (3) ~~Choice~~ Selection of Policies. The local government shall ~~prepare~~ select policies based upon the data analysis and ~~the~~ a discussion of the best possible alternative for each land use issue. ~~These policy choices~~ The policies that are selected shall be ~~set forth~~ indicated clearly in the plan. The policies shall be reasonable and

achievable by the local government within the fiscal constraints and the management system which the local government has established and within the 10-year planning period.

(4) ~~Description of Proposed Implementation Methods.~~

(A) ~~Each~~ The local ~~governmental unit~~ government shall discuss various methods ~~for~~ of achieving ~~each of the policies which have been adopted for the land-use issues selected for adoption.~~ The ~~land-use plan~~ Land Use Plan shall include a description of the methods by which the local government intends to implement their policy choices. Actions which will need to be taken shall be described and a proposed time schedule for these necessary actions shall be outlined.

(B) The Land Use Plan ~~plan shall address the consistency between the plan and all adopted~~ should include an analysis of the consistency of all existing land use ordinances and capital improvement plans and budgets with the Land Use Plan. ~~The intent here is for local government to analyze the consistency between the plan and all adopted land use ordinances, capital improvement plans and budgets and~~ The plan should also discuss the local administrative ability and timing priority for carrying out the policy.

(c) In the policy discussion process, the local governments shall review and consider all current land use and related plans, policies and regulations which affect the planning jurisdiction ~~as~~ as identified in Rule .0202(b)(3) .0206(d) of this ~~Section~~ Section whether prepared by the local government or another governmental unit. Meetings ~~shall~~ should be held with the planning and governing boards of all adjoining planning jurisdictions to discuss planning concerns of mutual interest. The plan shall include a list of these joint meetings and ~~discuss~~ the results of ~~them~~ those meetings.

(d) All policies adopted by the local government as a part of the ~~land-use plan~~ Land Use Plan shall be consistent with the overall coastal policy adopted by the Coastal Resources Commission.

Statutory Authority G.S. 113A-107(a); 113A-124.

#### .0213 ~~.0204~~ LAND CLASSIFICATION

(a) A land classification system has been ~~developed~~ devised as a means of assisting in the implementation of the local policies adopted ~~as provided in pursuant to~~ as provided in Rule .0203 .0212 of this Section. By delineating land classes on a map, local government and its citizens can specify those areas where certain policies (local, state and federal) will apply. The land classification system ~~is intended to~~ should be supported by and ~~complemented by~~ consistent with zoning, subdivision and other local growth management tools ~~and~~

these local tools should be consistent with the classification system as much as possible. Although specific areas are outlined on a land classification map, it ~~must be remembered~~ should be noted that land classification is merely a planning tool to help implement policies and not, in the strict sense of the term, a regulatory mechanism. ~~The land classification map must be of a scale and quality that is easily read by local, state and federal agencies.~~ Boundaries of each land class classification should be described in the text as clearly as possible ~~in the text~~. To further clarify its intent, the local government should describe how land classification is linked to policy. ~~For example, a local government may have a policy to protect surface water quality from agriculture and urban development runoff. The implementation strategy might be to require land buffers, sales etc. between development and water bodies. The local government could then designate a conservation buffer around water bodies. This buffer could be described in the narrative of the plan as "...a one mile buffer of conservation lands..." which would clarify the local government's intent.~~

(b) The final land classification map included in the Land Use Plan shall be clear and legible. This map may be a smaller version of the final map prepared by the planning jurisdiction. One copy of the land classification map which is suitable for entry into a geographic information system (GIS) shall be submitted to the Division of Coastal Management. This map shall reference a standard coordinate system (latitude/longitude or NC State Plane) and have a minimum map scale of 1:100,000 for counties. Higher detail maps should be used for municipal land classification maps. Where feasible, a digital version of the map shall be submitted.

(c) ~~(b)~~The land classification system provides a framework to be used by local governments to identify the future use of all lands. The designation of land classes allows the local government to illustrate their policy statements as to where and to what ~~density intensity~~ intensity they want growth to occur, and where they want to conserve natural and cultural resources by guiding growth.

(d) ~~(c)~~The land classification system includes seven classes: ~~developed, urban transition, limited transition, community, rural, rural with services, and conservation~~ Developed, Urban Transition, Limited Transition, Community, Rural, Rural with Services, and Conservation. ~~The local governments-local government~~ The local government may subdivide these classes into more specific subclasses. ~~Any subclasses but any subclass~~ Any subclass should be able to aggregate back to the original class. Some classes may not apply to each local government; for example, the ~~community~~ Community or ~~rural~~ Rural class may not apply in an incorporated municipality. Local governments are also encouraged to make some distinction between ~~urban transition~~ Urban Transition areas, which are intended to reflect intensely developing areas with the full range of urban services to be supplied, and ~~limited transition~~ Limited Transition areas that are less intensely developed, may have private services and are frequently located in a rural landscape. Both of these classes are described later in this Rule.

(e) ~~(d)~~In applying the land classification system ~~each~~ the local government should give particular attention to how, where and when development of certain types and intensity will be encouraged or discouraged, based upon the community services analysis conducted in Rule .0210(b) of this Section. Urban land uses and higher intensity uses which presently require the traditional urban services should be directed to lands classified ~~as developed~~ Developed. Areas developing or anticipated to develop at urban densities which will eventually require urban services should be directed to lands classified ~~transition as~~ Transition. Low density development in settlements which will not require sewer services should be directed to areas classified as ~~community~~ Community. Agriculture, forestry, mineral extraction and other similar low intensity uses and very ~~low density, dispersed low-density~~ low-density residential uses should be directed to lands classified ~~rural as~~ Rural. Generally, public or private water or sewer systems will not be provided in areas classified rural as an incentive for intense development. The land use classification should reflect the future water and wastewater service areas assumed in any water supply plan appendix.

(1) Developed:

(A) Purpose. The purpose of the ~~developed~~ Developed class is to provide for continued intensive development and redevelopment of existing cities, towns and their urban environs.

(B) Description and characteristics. Areas meeting the intent of the ~~developed~~ Developed classification are currently urban in character where minimal undeveloped land remains and have in place, or are scheduled for the timely provision of, the usual municipal or public services. Urban in character includes mixed land uses such as residential, commercial, industrial, institutional and other uses at high to moderate densities. Services include water, sewer, recreational facilities, streets and roads, police and fire protection. In some instances an area may not have all the traditional urban services in place, but if it otherwise has a developed character and is scheduled for the timely provision of these services, it still meets the intent of the developed classification. Areas developed for predominantly residential purposes meet the intent of this classification if they exhibit:

- (i) a density of ~~3~~ three or more dwelling units per acre; or
- (ii) a majority of lots of 15,000 square feet or less, which are provided or scheduled to be provided with the traditional urban services; ~~and/or or~~
- (iii) permanent population densities that are high and seasonal populations that may swell significantly.

(C) Discussion. Local governments may subdivide the ~~developed~~ Developed class into subclasses.

subclasses such as ~~Developed/multifamily residential, developed/single-family residential, developed/commercial and developed/industrial~~ are examples Developed/Multifamily Residential, Developed/Single-family Residential, Developed/Commercial and Developed/Industrial. In applying the ~~developed~~ Developed class or subclasses, the local government should discuss how, when and where it will provide the services necessary to support the needs of an urban area. This class is designed to illustrate urban intensity development and services necessary to support it and should be applied to existing cities and towns and intense development within the extraterritorial planning jurisdictional area (if any). The ~~developed~~ Developed class is one of two classes the local government should apply to areas containing intense urban development requiring urban services.

(2) Urban Transition:

(A) Purpose. The purpose of the ~~urban-transition~~ Urban Transition class is to provide for future intensive urban development on lands that are suitable and that will be provided with the necessary urban services to support intense urban development.

(B) Description and Characteristics. Areas meeting the intent of the ~~urban-transition~~ Urban Transition classification are presently being developed for urban purposes or will be developed in the next five to ten years to accommodate anticipated population and urban growth. These areas are in, or will be in ~~an urban~~ "transition" state of development going from lower intensity uses to higher intensity uses and as such will eventually require urban services. Examples of areas meeting the intent of this class are lands included within municipal extraterritorial planning boundaries and areas being considered for annexation.

(i) Areas classified ~~urban-transition~~ Urban Transition will provide lands for intensive urban growth when lands in the ~~developed~~ Developed class are not available. Urban ~~transition~~ Transition lands must be able to support urban development by being generally free of physical limitations and be served or readily served by urban services. Urban development includes mixed land uses such as residential, commercial, institutional, industrial and other uses at or approaching high to moderate densities. Urban services include water, sewer, streets and roads, police and fire protection that will be made available at the time development occurs or soon thereafter.

Permanent population densities in this class will be high and the seasonal population may swell significantly.

(ii) In choosing land for the ~~urban-transition~~ Urban Transition class, such land should not include: Areas with severe physical limitations which would make the provision of urban services difficult or impossible, lands which meet the definition of conservation, lands of special value (unless no other alternative exists) such as productive and unique agricultural lands, forest lands, potentially valuable mineral deposits, water supply watersheds, scenic and tourist resources including archaeological sites, habitat for important wildlife species, areas subject to frequent flooding, areas important for environmental or scientific values, lands where urban development might destroy or damage natural systems or processes of more than local concern, or lands where intense development might result in undue risk to life and property from natural or existing manmade hazards.

(iii) It should be understood that even though AEC standards occasionally permit ~~urban transition~~ Urban Transition type development on a ~~lot-by-lot~~ lot-by-lot basis within the various AEC's AECs, this classification should generally not be applied to any AEC.

(iv) Areas that are predominantly residential meet the intent of this class if:

- (I) they are approaching three dwelling units per acre, or
- (II) a majority of the lots are 15,000 square feet or less and will be provided with essential urban services to support this high density development, or
- (III) are contiguous to existing developed municipal areas.

(3) Limited Transition:

(A) Purpose. The purpose of the Limited Transition ~~Class~~ class is to provide for development in areas that will have some services, but are suitable for lower densities than those associated with the Urban Transition ~~Class~~, ~~and/or~~ class, or are geographically remote from existing towns and municipalities.

(B) Description and Characteristics. Areas meeting the intent of this class will experience increased development during the planning period. They will be in a state of development necessitating some municipal type services. These areas are of modest densities and often suitable for the provision of closed water



systems rather than individual wells.

- (i) Areas classified Limited Transition will provide controlled development with services, but may not be on lands that are suitable for traditional high intensity urban development normally associated with sewers or other services. These may be lands with physical limitations or areas near valuable estuarine waters or other fragile natural systems. Sewers and other services may be provided because such services are already in the area or readily available nearby, because the lands are unsuitable for septic tanks or the cumulative impact of septic tanks may negatively impact significant public ~~resources~~; resources. Self-contained, large, retirement/vacation developments in otherwise rural areas would meet the intent of this class.
  - (ii) The Limited Transition class is intended for predominately residential development with densities of three units per acre or less, or where the majority of lots are 15,000 square feet or greater. In many areas, lower densities would be necessary and should be discussed. Clustering or development associated with Planned Unit Developments may be appropriate in the Limited Transition ~~Class~~ class;
  - (iii) Areas which meet the definition of the Conservation class should not be classified Limited Transition; and
  - (iv) Due to its very nature, the Limited Transition ~~Land Classification~~ land classification may be controversial. As such, if a local government chooses to use this class, it shall describe the circumstances making this classification necessary and shall also describe how this class will help the local government achieve both its economic development and natural resources protection policies. This discussion shall include statements as to why lands included in this classification are appropriate for development which necessitates the provision of services.
- (C) Discussion. As sewer and other services become more widespread, they are frequently extended to areas that are not suitable for high density urban development. The use of such services generally increases environmental protection in these areas if the density of development remains relatively low. The Limited Transition class is intended to provide for appropriate moderate densities of development with the benefits of services. However, the reliability of services such as sewage

treatment systems is critical in these areas. If the local government intends to allow the private provision of urban services such as sewage systems and garbage collection, then the local government should require special assurances that these private services will reliably protect the public resources and avoid unnecessary public expenses. Both the Urban Transition and Limited Transition classes are designed to illustrate emerging and developing areas where some appropriate level of services are required.

(4) Community:

- (A) Purpose. The purpose of the ~~community~~ Community class is to provide for clustered, mixed land uses at low densities to help meet the housing, shopping, employment and other needs in rural ~~areas~~ counties.
- (B) Description and Characteristics. Areas meeting the intent of the ~~community~~ Community class are presently developed at low densities which are suitable for private septic tank use. These areas are clustered residential ~~and/or~~ or commercial land uses which provide both low intensity shopping and housing opportunities and provide a local social sense of a "community". These communities are generally small and some are not incorporated. Very limited municipal type services such as fire protection and community water may be available, but municipal type sewer systems are not to be provided as a catalyst for future development. In some unusual cases sewer systems may be possible, but only to correct an existing or projected public health hazard. Areas developed in a low density fashion in small, dispersed clusters in a larger rural county landscape with very limited or no water and sewer services meet the intent of this class.
- (C) Discussion. It should be stressed that the ~~community~~ Community class applies to clustered low intensity development in a rural landscape. This development is usually associated with crossroads in counties. Some "communities" may have or may require municipal type services to avert an existing or anticipated health problem. Even though limited services may be available, these areas should not be shown in the higher intensity land classes, as the major characteristic which distinguishes the Community class ~~community with limited services~~ from the ~~developed~~ Developed and ~~transition~~ Transition classes is that services are not provided to stimulate intense development in a rural setting, but rather to neutralize or avert health problems. Due to the small size of most communities, they will appear as small areas in a dispersed pattern on the county land



classification map. This class illustrates small, dispersed groupings of housing and commercial land uses forming "crossroad" communities in a rural landscape.

(5) Rural:

(A) Purpose. The ~~rural~~ Rural class is to provide for agriculture, forestry, mineral extraction and other allied uses traditionally associated with an agrarian region. Other land uses, due to their noxious or hazardous nature and negative impacts on adjacent uses may also be appropriate here if sited in a manner that minimizes their negative effect on surrounding land uses or natural resources. Examples include energy generating plants; refining plants, airports, landfills, sewage treatment facilities; fuel storage tanks and other industrial type uses. Very low density dispersed residential uses on large lots with on site water and sewer are consistent with the intent of the rural class. Development in this class should be as compatible with resource production as possible.

(B) Description and Characteristics. Areas meeting the intent of ~~this~~ the Rural classification are appropriate for or presently used for agriculture, forestry, mineral extraction and other uses, that due to their hazardous or noxious nature, should be located in a relatively isolated and undeveloped area. Very low density dispersed, single family residential uses are also appropriate within rural areas where lot sizes are large and where densities do not require the provision of urban type services. Private septic tanks and wells are the primary on site services available to support residential development, but fire, rescue squad and sheriff protection may also be available. Population densities will be very low.

(C) Discussion. The ~~rural~~ Rural class is the broadest of the five classes and will generally constitute the major land class on county land classification maps. Local governments may subdivide the ~~rural~~ Rural class into subclasses such as ~~rural/agriculture~~, ~~rural/forestry~~ Rural/Agriculture, Rural/Forestry etc. in order to illustrate where these basic rural activities will occur.

(6) Rural with Services.

(A) Purpose. The ~~rural-services~~ Rural with Services class is to provide for very low density land uses including residential use where limited water services are provided in order to avert an existing or projected health problem. Development within this class should be low intensity in order to maintain a rural character. Rural water systems, such as those funded by

Farmers Home Administration, are or may be available in these areas due to the need to avert poor water quality problems. These systems, however, should be designed to serve a limited number of customers and should not serve as a catalyst for future higher intensity development.

(B) Description and Characteristics. Areas meeting the intent of this class are appropriate for very low intensity residential uses, where lot sizes are large, and where the provision of services will not disrupt the primary rural character of the landscape. Private wells and septic tank services may exist, but most development is supported by a closed water system. Other services such as sheriff protection and rural or volunteer fire protection and emergency rescue etc. may also be available.

(C) Discussion. This class is intended to be applied where the local government has provided, or intends to provide very limited water services to avert a known or anticipated health problem in a predominantly larger agrarian region.

(7) Conservation:

(A) Purpose. The purpose of the ~~conservation~~ Conservation class is to provide for the effective long-term management and protection of significant, limited, or irreplaceable areas. Management is needed due to the natural, cultural, recreational, scenic or natural productive values of both local and more than local concern.

(B) Description and Characteristics. Areas meeting the intent of this classification include:

(i) Areas of Environmental Concern (AECs) ~~AEC's~~, including but not limited to public trust waters, estuarine waters, coastal wetlands etc., as identified in 15A NCAC 7H;

(ii) other similar lands, environmentally significant because of their natural role in the integrity of the coastal region, ~~and~~ including but are not limited to wetlands identified on Division of Coastal Management wetland maps, other wetlands, bottom-land hardwoods, peacans, swamp forests, areas that are or have a high probability of providing wildlife habitat, forest lands that are essentially undeveloped and lands which otherwise contain significant productive, natural, scenic, cultural or recreational resources.

(C) Discussion. The ~~conservation~~ Conservation class is designed to illustrate the natural, productive, scenic, cultural and recreational features of the coastal zone which make the

region a desirable place in which to live, work and visit. As ~~such~~ such, the ~~conservation~~ Conservation class should be applied to areas that because of their unique, productive, limited, cultural or natural features should be either not developed at all (preserved), or if developed, done so in an extremely limited and cautious fashion. At a minimum all ~~AEC's~~ AECs as defined in 15A NCAC 7H should be included in this class and the ~~land-use plan~~ Land Use Plan should so ~~state~~ state, and ~~the~~ The local government is strongly urged to include other similar areas ~~protected by either other afforded some level of protection by~~ protected by either other afforded some level of protection by state or federal agencies, ~~such as "404 wetlands". Examples include Army Corps of Engineers' "404 wetlands".~~ such as "404 wetlands". As ~~AECs~~ AECs should be included in the ~~conservation~~ Conservation class, the local government should acknowledge the distinctions among the various uses the Coastal Management Program permits within each AEC ~~group~~ category. It should be understood, however, the local government may develop its own more restrictive standards ~~for AECs~~ for AECs as the state's are considered minimum. At a minimum each plan should include language such as:

- (i) coastal wetlands - These areas are the most restrictive of all AECs and very few uses are permitted therein; the highest priority is for their preservation as they are well documented in their contribution to the natural productivity of the coastal area.
- (ii) ocean hazard AECs - These areas include V zones and ocean erodible areas and are known for their vulnerability to storms. Some limited uses are permitted within, even though subject to storm risks. Some development is permitted in these areas if it is well managed and carefully sited to minimize risks to life and property.
- (iii) estuarine shoreline AECs - These areas are located adjacent to estuarine waters AECs and are known for their contribution to the natural productivity of the waters close by. Many uses may be permitted as long as the 30 percent impervious rule is met and development is well managed on individual sites to ensure minimal degradation.
- (iv) other similar lands that are afforded some protection by another agency, such as "404 wetlands" where use and performance standards of that agency will apply.
- (v) other unique lands ~~that may not be afforded protection by another agency, but are~~ known for their natural, scenic, historical, cultural or hazardous nature. These

areas might include areas identified by the Natural Heritage Program, pocosins, savannas, tracts of native forests, undeveloped shorelines etc. When these areas are included in the conservation class the local government should describe the types of uses it deems appropriate, if any, within each area and under what circumstances those uses might be appropriate.

Urban services, public or private, should not be provided in these areas as a catalyst to stimulate intense development. In most cases limited on site services will adequately support any limited development within this class and will also protect the very features which justify the area's inclusion in the ~~conservation-classification~~ Conservation class. It should be understood that even though AEC standards occasionally permit urban type development on a ~~lot-by-lot~~ lot-by-lot basis within the various ~~AEC's~~ AECs and that services are occasionally provided, this is the exception rather than the rule, and the primary intent of the ~~conservation~~ Conservation class is to provide protection for the resources included therein. Mapping of ~~AEC's~~ AECs in the ~~conservation~~ Conservation class on the local government's land classification map should be accomplished with the understanding the ~~AEC's~~ AECs are intensively defined by their characteristics in 15A NCAC 7H, and therefore maps only indicate approximate locations and are not definitive enough for site specific regulation purposes. Policy development in the ~~land-use plan~~ Land Use Plan should acknowledge the intent of this class and policies should be consistent with the function of areas shown in the ~~conservation~~ Conservation class.

Statutory Authority G.S. 113A-107(a); 113A-124.

#### .0214 ~~.0206~~ INTERGOVERNMENTAL COORDINATION AND IMPLEMENTATION

(a) The ~~discussion of policies~~ statements of local policy and the land classification map will serve as the basic tools for coordinating numerous policies, standards, regulations and other governmental activities at the local, state and federal levels. Such coordination may be described by three applications:

- (1) The ~~policy discussion~~ local land use policies and the land classification map encourage coordination and consistency between local ~~land-use~~ land use policies and the state and federal governments actions. The local ~~land-use plans are~~ Land Use Plan is the principal ~~policy guides for document~~ guiding governmental decisions and activities which affect land uses in the coastal area.
- (2) The local ~~land-use plans provide~~ Land Use Plan provides a framework for budgeting, planning

and for the provision and expansion of community facilities such as water and sewer systems, schools and roads.

- (3) The local ~~land use plans will aid~~ Land Use Plan aids in better coordination of regulatory policies and decisions by describing the local land use policies and designating specific areas for certain types of activities.

(b) As specified in ~~.0203(e)~~ Rule .0212(c) of this ~~Section~~ each Section, the local government shall ensure that issues and concerns of adjoining planning jurisdictions shall be discussed. This is particularly important when one local government's development policies are inconsistent with those of the adjoining jurisdictions jurisdiction. Meaningful attempts to resolve such conflicts shall be made between the jurisdictions.

Statutory Authority G.S. 113A-107(a); 113A-124

### .0215 ~~.0207~~ PUBLIC PARTICIPATION

(a) Local governments are ~~required to~~ shall employ a variety of educational efforts and participation techniques to assure that all segments of the community have a full and adequate opportunity to ~~be informed and to effectively participate in planning decision-making all stages of plan development~~. Educational efforts may include, but are not limited to newspaper articles, ~~television and radio shorts~~ public service announcements, direct mail, etc., and participation Participatory techniques ~~can~~ may include, but are not limited to, neighborhood ~~advisory groups~~ meetings, questionnaires, newsletters and ~~public meetings~~ presentations to civic, business, church and similar groups. To encourage public participation at meetings, the public shall be informed of each public meeting in ~~several~~ multiple ways, rather than relying only on ~~the minimum~~ a legal notice.

(b) For all ~~land use plans~~, Land Use Plans, a concise ~~citizen participation plan~~ Citizen Participation Plan shall be prepared and adopted by the local government at the beginning of the planning process. The Citizen Participation Plan shall be included in the Land Use Plan. At a minimum, the plan shall include the following:

- (1) A ~~designation~~ Designation of the principal local board, agency or department responsible for ~~supervision of the project preparing or updating the Land Use Plan~~.
- (2) An explanation of the various means of soliciting public participation such as citizen surveys, questionnaires, informational brochures, community outreach, etc.
- (3) (2)A schedule of the various opportunities for public information/education schedule and participation with specific dates.
- (4) (3)An explanation of how the public will be notified of its opportunities for input.
- (4) ~~All citizen participation plans for land use plans will include a public hearing or meeting conducted at the beginning of the update process.~~

~~This shall be in addition to the public hearing to be conducted on the completed land use plan. During the initial public hearing or meeting, the local government will specifically discuss the existing policy statements prepared in accordance with Rule .0203 Policy Statements. The significance/importance of the policy statement to the CAMA land use planning process shall be described. The process by which the local government will solicit the views of a wide cross-section of citizens in the development of updated policy statements will be explained at the public hearing.~~

- (5) ~~Each citizen participation plan shall ensure that all economic, social, ethnic and cultural view points are considered as much as possible in the development of each land use plan.~~
- (6) ~~The adopted citizen participation plan shall be included as part of the local government's land use plan to include a listing of meetings, questionnaires etc. and an assessment as to the effectiveness and adequacy of the citizen participation effort.~~

(c) A public hearing or a series of meetings shall be conducted at the beginning of the update process. During the meeting the local government will discuss the statements of local policy found in the current Land Use Plan and the effect of those policies on the community. In addition, the local government will explain the process by which it will solicit the views of a wide cross-section of citizens in the development of undated policy statements.

(d) The Citizen Participation Plan shall ensure that all economic, social, ethnic and cultural view points are considered as much as possible in the development or update of the Land Use Plan. Where communities have a significant number of non-resident land owners, special efforts should be made by the local government to encourage and facilitate participation of non-residents in the planning process.

(e) The Land Use Plan shall include an assessment of the effectiveness and adequacy of the citizen participation effort and a description of how local elected officials were involved in all aspects of plan development.

(f) ~~(e)~~ While final policy decisions will be made by local elected officials, the ~~citizen participation plan~~ Citizen Participation Plan is designed to ~~give~~ provide the public the opportunity to voice its views on all required policy items.

Statutory Authority G.S. 113A-107(a); 113A-124.

### .0216 ~~.0210~~ PLAN REVIEW AND APPROVAL

(a) The Coastal Resources Commission will review all plans for technical accuracy, internal consistency, and consistency with other plans. In the event the Commission questions the accuracy of statements, or data contained in a plan, the CRG Commission will withhold approval of the plan and request that the local government support the

questionable statement or data in writing. After considering the supporting information, the Commission may reject the plan upon a finding that the statement or data set forth in the plan is not supported by the information supplied by the local government. In the event the local government does not support the questionable statement or data within 30 days the Commission will reject the plan.

(b) In the event the Commission determines that a plan is internally inconsistent or is inconsistent with other local plans or includes inaccurate data, the Commission will withhold approval of the plan and may request the local government(s) government or governments to provide data to resolve or support the alleged internal inconsistencies or the inconsistencies between plans. After considering the supporting information, the Commission may reject the plan upon finding that the inconsistencies have not been resolved. In the event that the local government or governments do not resolve the inconsistencies or otherwise satisfy the Commission that inconsistencies do not exist within 30 days, the Commission will reject the plan or plans.

(c) State and federal agencies with technical expertise in land use planning and related fields, the Coastal Resources Advisory Council, regional councils of government, and other interested parties will be called upon to participate in the land use plan Land Use Plan review process. The participation in the review process of state and federal agencies that have activities in the coastal area is especially important so that they can determine if their concerns are being adequately addressed. The CRC Commission shall consider the recommendations of these parties in determining whether to approve or disapprove local land use plans Land Use Plans.

(d) The land use plan review process shall follow the timetable as set out in Section .0400 of this Subchapter. In addition to the basis for withholding or denying approval of Land Use Plans cited above, the Commission shall not approve any plan which:

- (1) is inconsistent with the current North Carolina Coastal Management Plan (other than the Land Use Plan under consideration),
- (2) is inconsistent with the Rules of the Commission, or
- (3) violates state or federal law or policy.

(e) To assist in plan review, the Chairman of the Commission will designate one member of the Commission or the Coastal Resources Advisory Council who shall personally review the planning process and the plan and shall report his/her observations and recommendations to the Commission during the plan approval proceedings.

Statutory Authority G.S. 113A-110; 113A-124.

## SECTION .0400 - LAND USE PLAN AMENDMENT PROCESS

### .0401 LAND USE PLAN AMENDMENT

The land use plan Land Use Plan may be amended as a whole by a single resolution or in parts by successive

resolutions. The successive resolutions may address geographical sections, county divisions, or functional units of subject matter.

Statutory Authority G.S. 113A-110; 113A-124.

### .0402 PUBLIC HEARING REQUIRED

(a) The land use plan Land Use Plan may be amended only after a properly held public hearing. Notice of the public hearing must appear shall be posted at least 30 days prior to the public hearing and must state the date, time, place, proposed action, and that copies of the amendment may be viewed at a particular office in the county courthouse or town hall during designated hours. The notice must appear at least once in a newspaper of general circulation in the county planning jurisdiction. The notice may also be posted in other public facilities such as county or city office buildings, post offices or similar locations.

(b) When the land use plan subject to amendment is a city land use plan, the amendment shall also be made available during specified hours at a particular office in the town hall or equivalent facility and the public hearing notice shall so state.

(b) (e) Copies of the proposed amendment or update shall be available at the time notice is provided; minor provided. Minor changes after hearing are acceptable without additional meetings hearings unless the changes are so significant that the original notice would not have provided adequate notice to the public of the subject matter and potential action. Significant changes to a proposed amendment will require another public hearing advertised in the same manner as the original that advises of the same subject matter to be considered.

(c) (d) Local governments are encouraged to adopt their plan amendments expeditiously following the close of the public hearing.

Statutory Authority G.S. 113A-110; 113A-124.

### .0403 NOTICE TO COASTAL RESOURCES COMMISSION

(a) The local government proposing an amendment to its Land Use Plan a land use plan amendment shall provide to the executive secretary of the CRC Commission or his designee written notice of the public hearing, a copy of the proposed amendment, and the reasons for the amendment no less than 30 days prior to the public hearing. After the public hearing, the executive secretary or his designee shall receive a copy of the amendment as adopted.

(b) The unit of local government amending the land use plan shall submit the full text of any the proposed amendment in full page units as it would appear in the land use plan Land Use Plan if adopted in the proposed form. Any maps (such as the land classification map) that are the subject of the amendment or that will be affected by the amendment shall also be submitted as they would appear if the proposed amendment were adopted. If the proposed land use plan amendment includes reclassifying an area from

a lower-intensity land class which does not presently require urban type services to a higher-intensity class which will necessitate urban ~~type~~ services, then the local government should describe, as part of the amendment, how, when and where these services will be provided in order to support such a reclassification.

- (1) Local governments that presently enforce the minimum land management tools (zoning and subdivision regulations, or planned unit development ordinances; ~~PUD's~~) and also supply other urban services such as water, sewer, fire and police protection, solid waste disposal, transportation network and schools, shall so state, and as part of any plan amendment proposal shall assure the ~~CRC~~ Commission that the local government has or will provide for adequate services to support any development that will occur. As part of this assurance, the local government shall discuss the circumstances making the amendment necessary and shall also describe how this amendment will help the local government ~~achieve and~~ implement its stated policies as contained in the ~~land-use plan~~ Land Use Plan. This discussion shall also include an examination of the availability of vacant land presently in the land classification being sought for in the proposed amendment and why the land proposed for reclassification is more appropriate for intense development than that presently vacant and currently classed for intense development.
- (2) Local governments that are not presently enforcing the minimum land management tools (zoning and subdivision regulations; or planned unit development ordinances ~~PUD's~~) and that do not provide public services such as water, sewer, fire and police protection, solid waste disposal, transportation network and schools, shall so state as part of any proposed plan amendment. If the local government intends to allow these services to be provided privately, then a "demand-supply" analysis is required as part of any plan amendment proposed. This analysis shall be thoroughly discussed at the local public hearing prior to local action and shall be available for public review during the 30 day public hearing notice period as part of the notice and the notice shall so state. This analysis shall also include information as to the whole range of uses permitted within the proposed land classification and shall discuss potential impacts associated with those uses, including the most dense possible development therein. At a minimum, the demand-supply analysis shall discuss: water, sewer, fire and police protection, solid waste disposal, transportation impacts and school impacts. Potential impacts on the immediate

environment shall also be discussed. As part of any proposed amendment, the local government shall also discuss the circumstances making the amendment necessary and shall also describe how the amendment will help the local government achieve and implement its stated policies as contained in the ~~land-use plan~~ Land Use Plan. This discussion shall also include an examination of the availability of vacant land presently in the land classification being sought, and why the proposed reclassification is more appropriate for intense development than that presently vacant and currently classed for intense development.

- (c) The executive secretary of the Commission shall receive a copy of the amended text or maps, or certification of adoption as proposed within seven days after adoption. If the adopted amendment varies from the proposed revision, the adopted amendment shall be submitted in the manner described in Paragraph (b) of this Rule for proposed amendments.

*Statutory Authority G.S. 113A-110; 113A-124.*

#### **.0404 WAIVER OF FORMAL REVIEW BY THE CRC**

- (a) When the local government ~~governmental unit amending the land-use plan~~ deems the a proposed amendment sufficiently insubstantial, it shall request a waiver of the formal amendment procedure when giving notice to the executive secretary. The executive secretary shall make such determination in accordance with specific ~~CRC~~ Commission standards and ~~policy, policies,~~ and mail written notification to the local government no later than two weeks after receipt of notice.

- (b) If the waiver is granted and the amendment is adopted as proposed, it shall become final upon local adoption and is not subject to ~~commission~~ Commission review as noted in Rule .0405 of this Section. The executive secretary shall receive certification that the amendment was adopted as proposed within seven days after adoption.

- (c) If the waiver is granted and the amendment is not adopted as proposed, the adopted amendment shall be submitted to the executive secretary, shall be subject to ~~commission~~ Commission review as noted in Rule .0405 of this Section, and shall become final only after such ~~commission~~ Commission review.

- (d) If the request for waiver is denied by the executive secretary, the waiver provisions of these ~~rules~~ Rules shall not apply. The local amendment finally adopted shall be reviewed by the ~~CRC~~ Commission in accordance with the regular plan amendment process.

*Statutory Authority G.S. 113A-110; 113A-124.*

#### **.0405 CONSISTENCY AND ADOPTION**

- (a) The amended ~~land-use plan~~ Land Use Plan must ~~remain~~ be consistent with the Commission's Land Use

Planning Guidelines (15A NCAC 7B) and insofar as possible, with the Land Use Plans of adjacent local governments. 15A NCAC 7B, Land Use Planning Guidelines, and adjacent city or county plans.

(b) The ~~Coastal Resources~~ Commission shall review ~~locally adopted land use plan~~ locally-adopted Land Use Plan amendments that are not subject to the waiver provisions. The local government shall submit in writing its proposed plan amendment to the executive secretary or his designee at least 21 ~~calendar~~ days prior to the ~~Commission~~ meeting at which the local government intends for the Commission to consider the change. This schedule should provide time for an evaluation of the amendment to determine if it is sufficient. If adequate time is not available for review of the amendment, the local government shall be advised in writing by the executive secretary of the date at which the Commission anticipates review of the amendment. Public comments are invited during the ~~ERC~~ Commission's review of the proposed ~~plan~~ amendment.

(1) The ~~ERC~~ Commission shall approve, disapprove, or conditionally approve ~~any local the proposed land use plan~~ Land Use Plan amendment ~~it is reviewing following the procedure and conditions specified for Land Use Plans in Rule .0216 of this Subchapter.~~

(2) If the amendment is disapproved or conditionally approved, the Commission shall provide reasons for such action ~~shall be explained~~ to the local government with suggestions as to how the amendment might be changed so approval could be granted.

(3) When the local government complies with the imposed condition for a conditionally approved plan, then plan approval is automatic with no further action needed by the Commission.

(c) If additional time is needed for review of a plan amendment, the local government shall be advised in writing according to Paragraph (b) of this Rule. Otherwise failure of the ~~ERC~~ Commission to take negative action at its first regularly scheduled meeting after notification to the executive secretary of the adopted amendment indicates compliance with these standards and commission approval of the amendment.

(d) Any ~~final~~ amendments to the text or maps of the ~~land use plan~~ Land Use Plan shall be incorporated in context in ~~the land use~~ all available copies of the plan and shall be dated to indicate the ~~date the amendment became final~~ dates of local adoption and Commission approval. The amended ~~land use plan~~ Land Use Plan shall be maintained as required by G.S. 113A-110(g).

*Statutory Authority G.S. 113A-110; 113A-124.*

#### **.0406 STANDARDS FOR WAIVER OF FORMAL REVIEW**

The executive secretary's authority to waive formal review of proposed ~~land use plan~~ Land Use Plan amendments is limited to the following instances:

- (1) minor changes in policy statements or objectives that are the result of public ~~participation, partici-~~ participation;
- (2) modification of any classification that does not affect ~~transition~~ Transition or ~~conservation classes,~~ Conservation classes;
- (3) new data compilations and associated statistical adjustments that do not suggest major substantive ~~revisions, revisions~~;
- (4) more detailed identification of existing land uses or additional maps of existing or natural ~~condi-~~ tions, conditions;
- (5) identification of fragile areas to be brought under locally initiated ~~protection, protection~~;
- (6) changes in land classifications to reflect new designations or deletions of ~~AECs, AECs~~; and
- (7) changes certified by the executive secretary to be consistent with specific ~~ERC~~ Commission comments.

*Statutory Authority G.S. 113A-110; 113A-124.*

### **SECTION .0500 - LAND USE PLAN UPDATE PROCESS**

#### **.0501 UPDATE REQUIRED**

The local ~~land use plan must~~ Land Use Plan shall be updated at least every five years or in accordance with a schedule established by the Commission. If ~~any local plans are the plan~~ is not updated by the local planning unit government and submitted for reapproval to the ~~Coastal Resources~~ Commission within five years of adoption, the plans may be voided and an updated plans plan may be prepared by the ~~ERC~~ Commission for use in that local ~~area~~ jurisdiction. ~~The plans~~ Plans may be updated more frequently at the desire of the local government.

*Statutory Authority G.S. 113A-107(a); 113A-124.*

#### **.0502 PURPOSE OF UPDATE**

The major purpose of ~~periodic~~ updating of the local land use plans Land Use Plans is for the local government to identify and analyze emerging community issues and ~~problems~~ problems, and to reexamine policies and to decide whether ~~these local land use~~ these local land use policies have been effective and whether they should be continued or changed. The following objectives shall be met by all planning jurisdictions in their plan update:

- (1) to further define and refine local policies and issues (as described in ~~.0203~~ Rule .0212 of this Subchapter);
- (2) to further examine and refine the land classification system and the local land classification map (as described in ~~.0204~~ Rule .0213 of this Subchapter);
- (3) to assess the effectiveness of the existing ~~land use plan~~ Land Use Plan and its implementation;
- (4) to further explore implementation procedures; and



- (5) to promote a better understanding of the land use planning process.

Statutory Authority G.S. 113A-107(a); 113A-124

#### .0503 DATA COLLECTION AND ANALYSIS

The ~~land use plan~~ Land Use Plan update process shall include the collection and analysis of any new land use related data that has become available since the preparation of the ~~latest adopted current land use plan~~ Land Use Plan. ~~Such data shall include but not be limited to the types of data discussed in .0202 of this Subchapter.~~ In addition to the types of data discussed in Rule .0206 of this Subchapter, the update shall include a discussion of the local government's experience in implementing the previous plan.

Statutory Authority G.S. 113A-107(a); 113A-124.

#### .0504 AMENDMENTS TO MAPS

The ~~existing land use map of existing land uses~~ and the land classification map shall be amended to show changes in land use since the adoption of the ~~existing current land use plan~~ Land Use Plan. Maps which show only the changes in land use or land classification may be prepared as overlays to the existing ~~adopted~~ maps.

Statutory Authority G.S. 113A-107(a); 113A-124.

#### .0505 FORMAT OF PLAN UPDATE

(a) The ~~land use plan~~ Land Use Plan may be prepared in a loose-leaf or other easily changeable format to facilitate future updating, ~~thereby by~~ allowing sections which are not being updated to be included without reduplicating the entire plan.

(b) An executive summary of the ~~land use plan~~ Land Use Plan and any amendments to the plan shall be prepared for widespread distribution to all interested parties.

Statutory Authority G.S. 113A-107(a); 113A-124.

#### .0506 REVIEW AND APPROVAL

(a) The Commission shall approve, disapprove, or conditionally approve the Land Use Plan Update following the procedures and conditions specified for Land Use Plans in Rule .0216 of this Subchapter.

(b) If the update is disapproved or conditionally approved, the Commission shall provide reasons for such action to the local government with suggestions as to how the update might be changed so approval could be granted. Until the update is approved, the pre-existing certified plan shall remain in effect.

Statutory Authority G.S. 113A-107(a); 113A-124.

#### ~~.0507~~ ~~.0506~~ OFFICIAL COPY OF PLAN

An official copy of the locally-adopted and state-certified ~~adopted land use plan~~ Land Use Plan including all amend-

ments and updates, shall be kept on file by the ~~Coastal Resources Commission~~ and the local government ~~adopting the plan~~. County local governments shall exchange certified plans both with contiguous counties and municipalities within its borders and each municipality ~~within a county~~ shall also exchange its certified plan with the county in which it is located.

Statutory Authority G.S. 113A-107(a); 113A-124.

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Coastal Resources Commission intends to amend rules cited as 15A NCAC 7H .0308, .1705; and 7K .0103.

**Proposed Effective Date:** December 1, 1995.

**A Public Hearing** will be conducted at 4:00 p.m. on September 28, 1995 at the Sea Trail Plantation, Sunset Beach, North Carolina.

**Reason for Proposed Action:** In response to Rules Review Commission objection. The Commission requested a definition of "threatened structure".

**Comment Procedures:** All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than September 28, 1995. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings for the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Ms. Kris M. Horton, Division of Coastal Management, Post Office Box 27687, Raleigh, North Carolina 27611-7687, (919) 733-2293.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local funds.

## CHAPTER 7 - COASTAL MANAGEMENT

### SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

#### SECTION .0300 - OCEAN HAZARD AREAS

#### .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

- (a) Ocean Shoreline Erosion Control Activities:
- (1) Use Standards Applicable to all Erosion Control Activities:
  - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 7M .0200.

- (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include, but are not limited to: bulkheads; seawalls; revetments; jetties; groins and breakwaters.
  - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
  - (D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.
  - (E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for important fish and wildlife species unless adequate mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.
  - (F) Project construction shall be timed to minimize adverse effects on biological activity.
  - (G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
  - (H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:
    - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access to a substantial population on a barrier island; that is vital to public safety; and is imminently threatened by erosion;
    - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
    - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership and will have minimal impacts on public use of the beach.
  - (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
    - (i) the structure is necessary to protect an historic site of national significance, which is imminently threatened by shoreline erosion; and
    - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site; and
    - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
    - (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits clearly outweigh the short or long range adverse impacts. Additionally, the permit must include conditions providing for mitigation or minimization by that agency of any significant and unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
  - (J) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
    - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits; and
    - (ii) dredging alone is not practicable to maintain safe access to the affected channel; and
    - (iii) the structure is limited in extent and scope to that necessary to maintain the channel; and
    - (iv) the structure will not result in substantial adverse impacts to fisheries or other public trust resources; and
    - (v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits clearly outweigh the short or long range adverse impacts. Additionally, the permit must include conditions providing for mitigation or minimization by that agency of any significant and unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
  - (K) Proposed erosion response measures using innovative technology or design will be considered as experimental and will be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
- (A) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.
  - (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph may be used only to protect imminently threatened structures. ~~Normally, a~~ <sup>A</sup> structure will be considered to be imminently threatened if its foundation septic system, or right-of-way in the case of roads, is less than 20 feet away



- from the erosion scarp. Structures located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.
- (C) Temporary erosion control structures may be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
  - (D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
  - (E) Temporary erosion control structures must not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.
  - (F) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five years if it is protecting a bridge or a road. The property owner will be responsible for removal of the temporary structure within 30 days of the end of the allowable time period. A temporary erosion control structure may remain in place for up to five years regardless of the size of the structure if the community in which it is located is actively pursuing a beach nourishment project. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:
    - (i) been issued a CAMA permit approving such project, or
    - (ii) been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or
    - (iii) received a favorable economic evaluation report on a federal project approved prior to 1986.
  - (G) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure, it must be removed by the property owner within 30 days.
  - (H) Removal of temporary erosion control structures may not be required if they are covered by dunes with vegetation sufficient to be considered stable and natural.
  - (I) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
  - (J) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
  - (K) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
  - (L) Construction of a temporary erosion control structure can be approved only once on any property regardless of ownership.
  - (M) Existing sandbag structures can be maintained provided that the permitted dimensions are not exceeded.
  - (N) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Parts (F), (G) and (H) of this Subparagraph with the pertinent time periods beginning on May 1, 1995.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.
  - (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
    - (A) The area on which this activity is being performed must maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
    - (B) The activity must not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
    - (C) Movement of material from seaward of the low water line will require a CAMA Major

Development and State Dredge and Fill Permit;

- (D) The activity must not significantly increase erosion on neighboring properties and must not have a significant adverse effect on important natural or cultural resources;
- (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:

- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.
- (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
- (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas will be immediately replanted or temporarily stabilized until planting can be successfully completed.
- (4) Sand used to establish or strengthen dunes must be of the same general characteristics as the sand in the area in which it is to be placed.
- (5) No new dunes shall be created in inlet hazard areas.
- (6) Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune.
- (7) No disturbance of a dune area will be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid unnecessary dune impacts.

(c) Structural Accessways:

- (1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner which entails negligible alteration on the primary dune. Structural accessways may not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
- (2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune:
  - (A) The accessway is exclusively for pedestrian use;
  - (B) The accessway is less than six feet in width; and
  - (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the

extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and

- (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.
- (4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") shall be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 10 feet in width and shall be constructed of wooden sections fastened together over the length of the affected dune area.
- (d) Construction Standards. New construction and substantial improvements (increases of 50 percent or more in value on square footage) to existing construction shall comply with the following standards:
  - (1) In order to avoid unreasonable danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100 year storm. Any building constructed within the ocean hazard area shall comply with the North Carolina Building Code including the Coastal and Flood Plain Construction Standards, Chapter 34, Volume I or Section 39, Volume I-B and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
  - (2) All structures in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
  - (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on the primary dune or nearer to the ocean, the pilings must extend to five feet below mean sea level.
  - (4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100 year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a., b., d., 113A-124.

**SECTION .1700 - GENERAL PERMIT FOR  
EMERGENCY WORK REQUIRING A CAMA  
AND/OR A DREDGE AND FILL PERMIT**

**.1705 SPECIFIC CONDITIONS**

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

- (1) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.
- (2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph may be used only to protect imminently threatened structures. ~~Normally, a~~ A structure will be considered to be imminently threatened if its foundation, septic system, or, right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Structures located more than 20 feet from the erosion scarp or in areas where there is not obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.
- (3) Temporary erosion control structures may be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (4) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (5) Temporary erosion control structures must not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.
- (6) The permittee shall be responsible for the removal of remnants of all or portions of any damaged temporary erosion control structure.
- (7) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five years if it is protecting a bridge or a road. The property owner shall be

responsible for removal of the temporary structure within 30 days of the end of the allowable time period. A temporary erosion control structure may remain in place for up to five years regardless of the size of the structure if the community in which it is located is actively pursuing a beach nourishment project. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:

- (i) been issued a CAMA permit approving such project, or
- (ii) been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or
- (iii) received a favorable economic evaluation report on a federal project approved prior to 1986.
- (8) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure, it must be removed by the permittee within 30 days.
- (9) Removal of temporary erosion control structures shall not be required if they are covered by dunes with vegetation sufficient to be considered stable and natural.
- (10) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- (11) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (12) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
- (13) Construction of a temporary erosion control structure can be approved only once on any property regardless of ownership.
- (14) Existing sandbag structures can be maintained provided that the permitted dimensions are not exceeded.
- (15) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Subparagraphs (7), (8) and (9) of this Paragraph with the pertinent time periods beginning on May 1, 1995.

(b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:

- (1) no work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to

- (2) its condition immediately before the emergency; the erosion control structure shall be located no more than 20 feet waterward of the endangered structure;
- (3) fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.
- (c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.
  - (1) Work permitted by this general permit shall be subject to the following limitations:
    - (A) no work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
    - (B) the erosion control structure shall be located no more than 20 feet waterward of the endangered structure;
    - (C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public highways or other structures of public interest will be considered on a case-by-case basis;
    - (D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.
  - (2) This permit only authorizes the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

Statutory Authority G.S. 113-229(c); 113A-107(a),(b); 113A-113(b); 113A-118.1.

#### SUBCHAPTER 7K - ACTIVITIES IN AREAS OF ENVIRONMENTAL CONCERN WHICH DO NOT REQUIRE A COASTAL AREA MANAGEMENT ACT PERMIT

#### SECTION .0100 - ACTIVITIES NOT CONSIDERED DEVELOPMENT

##### .0103 MAINTENANCE AND REPAIR

(a) Maintenance and repairs are specifically excluded from the definition of development under the conditions and in the circumstances set out in G.S. 113A-103(5)(b)(5). Individuals required to take such measures within an AEC

shall contact the local CAMA representative for consultation and advice before beginning work.

Property may be considered to be imminently threatened for the purpose of the exclusion for maintenance and repairs when it meets the criteria for an imminently threatened structure as set out in 15A NCAC 7H .0308(a), which provides that a structure will ~~normally~~ be considered to be imminently threatened by erosion when the structure's foundation (or, in the case of beach bulldozing, the structure's on-site waste disposal system) is less than 20 feet from the erosion scarp. Structures located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.

(b) Beach bulldozing, defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation, for the purpose of preventing damage to imminently threatened structures, by the creation of protective sand dunes shall qualify for an exclusion under G.S. 113A-103(5)(b)(5) subject to the following limitations:

- (1) The area on which this activity is being performed must maintain a slope of adequate grade so as not to endanger the public or the public's use of the beach and should follow the natural slope as closely as possible. The movement of material utilizing a bulldozer, front-end loader, back hoe, scraper or any type of earth moving or construction equipment should not exceed one foot in depth measured from the preactivity surface elevation;
- (2) The activity must not exceed the lateral bounds of the applicant's property unless he has permission of adjoining landowners;
- (3) Movement of material from seaward of the low water line will not be permitted under this exemption;
- (4) The activity must not significantly increase erosion on neighboring properties and must not have a significant adverse effect on important natural or cultural resources;
- (5) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(c) Individuals proposing other such activities must consult with the local permit officer to determine whether the proposed activity qualifies for the exclusion under G.S. 113A-103(5)(b)(5).

Statutory Authority G.S. 113A-103(5)(b)(5); 113A-118(a).

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Coastal Resources Commission intends to amend rules cited as 15A NCAC 7H .0309 and .0310.

**Proposed Effective Date:** February 1, 1996.

**A Public Hearing** will be conducted at 4:00 p.m. on September 28, 1995 at the Sea Trail Plantation, Sunset Beach, North Carolina and November 16, 1995 at the Ramada Inn, Kill Devil Hills, North Carolina.

**Reason for Proposed Action:** Clarification necessary after a declaratory ruling by the Coastal Resources Commission for a specific development proposal affected by the subject rules.

**Comment Procedures:** All persons interested in this matter are invited to attend the public hearing(s). The Coastal Resources Commission will receive comments which are in the Division office no later than November 16, 1995. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings for the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Ms. Kris M. Horton, Division of Coastal Management, Post Office Box 27687, Raleigh, North Carolina 27611-7687, (919) 733-2293.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local funds.

## CHAPTER 7 - COASTAL MANAGEMENT

### SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

#### SECTION .0300 - OCEAN HAZARD AREAS

##### .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development may be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of the Subchapter if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campgrounds that do not involve substantial permanent structures;
- (2) parking areas with clay, packed sand or similar surfaces;
- (3) outdoor tennis courts;
- (4) elevated decks not exceeding a footprint of 500 square feet;
- (5) beach accessways consistent with Rule .0308(c) of this Subchapter;
- (6) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (7) uninhabitable, single-story storage sheds with a footprint of 200 square feet or less;
- (8) temporary amusement stands; and
- (9) swimming pools.

In all cases, this development shall only be permitted if it is landward of the vegetation line; involves no significant

alteration or removal of primary or frontal dunes or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements of local zoning, subdivision or health regulations; and meets all other non-setback requirements of this Subchapter.

(b) Where strict application of the oceanfront setback requirements of Rule .0306(a) of this Subchapter would preclude placement of permanent substantial structures on lots existing as of June 1, 1979, single family residential structures may be permitted seaward of the applicable setback line in ocean erodible areas, but not inlet hazard areas, if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation line;
- (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Subchapter.
  - (A) All pilings have a tip penetration that extends to at least ~~four~~ five feet below mean sea level;
  - (B) The footprint of the structure be no more than 1,000 square feet or 10 percent of the lot size, whichever is greater.
- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system must be submitted as part of the CAMA permit application.

(c) Reconfiguration of lots and projects that have a grandfather status under Paragraph (b) of this Rule will be allowed provided that the following conditions are met:

- (1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;
- (2) Reconfiguration will not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences; and
- (3) Development on lots qualifying for the exception in Paragraph (b) of this Rule must meet the requirements of Paragraphs (1) through (5) of that Paragraph.

For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined

as the greatest exterior dimensions of the structure, including covered stairways, when extended to ground level.

(d) The following types of water dependent development shall be permitted seaward of the first line of stable natural vegetation if all other provisions of this Subchapter and other state and local regulations are met:

- (1) piers (excluding any pier house, office, or other enclosed areas); and
- (2) maintenance and replacement of existing or formerly existing bridges.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.; 113A-113(b)(6)b.; 113A-113(b)(6)d.; 113A-124.

#### **.0310 USE STANDARDS FOR INLET HAZARD AREAS**

(a) Inlet areas as defined by Rule .0304 of this Section are subject to inlet migration, rapid and severe changes in watercourses, flooding and strong tides. Due to this extremely hazardous nature of the inlet hazard areas, all development within these areas shall be ~~located~~ permitted in accordance with the following standards:

- (1) All development in the inlet hazard area shall be set back from the first line of stable natural vegetation a distance equal to the setback required in the adjacent ocean hazard area;
- (2) Permanent structures shall be permitted at a density of no more than one commercial or residential unit per 15,000 square feet of land area on lots subdivided or created after July 23, 1981;
- (3) Only residential structures of four units or less or non-residential structures of less than 5,000 square feet total floor area shall be allowed within the inlet hazard ~~area~~, area, except that access roads to those areas and maintenance and replacement of existing or formerly existing bridges shall be allowed;
- (4) Established common-law and statutory public rights of access to the public trust lands and waters in inlet hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways;
- (5) All other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the inlet hazard areas;

(b) ~~The types of development exempted from the ocean setback rules in Rule .0309(a) of this Section shall also be exempt from these inlet hazard area setback requirements. The inlet hazard area setback requirements shall not apply to the types of development exempted from the ocean setback rules in Rule 7H .0309(a), nor, to the types of development listed in Rule 7H .0309(c).~~

Statutory Authority G.S. 113A-107; 113A-113(b); 113A-124.

## **TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

### **CHAPTER 60 - BOARD OF REFRIGERATION EXAMINERS**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Refrigeration Examiners intends to amend rule cited as 21 NCAC 60 .1103 and repeal rule 21 NCAC 60 .0105.

**Proposed Effective Date:** November 1, 1995.

**A Public Hearing** will be conducted at 10:00 a.m. on August 18, 1995 at 410 Oberlin Road, Suite 410, Raleigh, NC 27605.

#### **Reason for Proposed Action:**

21 NCAC 60 .0105 - repealed due to legislative changes.  
21 NCAC 60 .1103 - redefines penalties for disciplinary action.

**Comment Procedures:** All persons interested in this matter are invited to attend the public hearing. The State Board of Refrigeration Examiners will receive mailed written comments postmarked no later than August 31, 1995. More information may be obtained by contacting the Board Office, P.O. Box 10666, Raleigh, NC 27605, 919-755-5022.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of local government or state funds.

#### **SECTION .0100 - ORGANIZATION AND DEFINITIONS**

##### **.0105 REFRIGERATION LAW PLUG-IN DEVICES**

~~Only refrigeration appliances and equipment which are shipped from the manufacturer equipped or packaged with a cord and attachment plug suitable for plugging into permanently installed receptacles shall be defined as plug-in refrigeration equipment and exempt from the provisions of G.S. 87, Article 5.~~

Statutory Authority G.S. 87-54; 87-58.

#### **SECTION .1100 - DISCIPLINARY ACTION**

##### **.1103 PRELIMINARY DETERMINATION**

(a) A charge, filed under Rule .1102 of this Section, shall be referred initially to a review committee.

(b) The review committee shall be made up of the following individuals:

- (1) one officer, other than the Chairman, of the State Board of Refrigeration Examiners,
- (2) the legal counsel of the Board,
- (3) the Executive Director of the State Board of Refrigeration Examiners.

(c) The review committee shall have the authority to determine prior to a full Board hearing whether or not charges as may be filed against a refrigeration contractor are unfounded, frivolous or trivial. The determination of the review committee shall be final in this respect.

(d) Once a charge is referred to the review committee a written notice of said charge shall be forwarded to the licensee against whom the charge is made. Notice of the charge and of the alleged facts and circumstances surrounding the charge shall be given personally or by registered or certified mail, return receipt requested. A response to said charges shall be requested of the licensee so charged and shall be made within twenty days from the date shown on the return mail certificate or date of personal notice.

(e) If the licensee denies the charges brought against him, then in the sole discretion of the review committee, additional investigative personnel may be retained by the Board for the purpose of obtaining evidence relating to such charges. The reasonable expenses of any such additional personnel shall be borne by the Board.

(f) After all preliminary evidence has been received by the review committee it shall make a preliminary determination of the charges filed against the refrigeration contractor. From the evidence it may recommend to the Board that:

- (1) the charges be dismissed as unfounded, frivolous, trivial; or
- (2) when the charge is admitted by the licensee or the evidence warrants, the Board be presented with the charge for its decision. If the charge is of such gravity as to make the imposition of punitive sanctions likely, the Board may administer one or more of the following penalties if

the licensee is found to have violated the provisions of Article 5 of Chapter 87 of the General Statutes;

- (A) Reprimand;
  - (B) Suspension from practice for a period not to exceed 12 months;
  - (C) Probationary revocation of license upon conditions set by the Board as the case shall warrant with revocation upon failure to comply with the conditions; or
  - (D) Revocation of license; or
  - (E) An acceptance of an offer in compromise of the charge, as provided by G.S. 87-59(d); or
- (3) if the charge is denied and evidence warrants, or if the charge, while admitted, is of such gravity as to make the imposition of punitive sanctions likely, the charge be presented to the Board for its decision on the merits of the charge in accordance with G.S. 150B. In connection with any such reprimand and subsequent order the Board may also provide that in the event the licensee is determined to have violated in the future any of the provisions of G.S. 87, Article 5, the Board may suspend or revoke his license as prescribed by law.

(g) All records, papers, and other documents containing information collected and compiled by the Board as a result of investigation, inquiries, or interviews conducted in connection with a licensing or disciplinary matter shall not be considered public records within the meaning of G.S. 132.

*Statutory Authority G.S. 87-57; 87-59; ch. 132; 150B-38.*

**T**he List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

**K**ey:

Citation = Title, Chapter, Subchapter and Rule(s)  
 AD = Adopt  
 AM = Amend  
 RP = Repeal  
 With Chgs = Final text differs from proposed text  
 Corr = Typographical errors or changes that requires no rulemaking  
 Eff. Date = Date rule becomes effective  
 Temp. Expires = Rule was filed as a temporary rule and expires on this date or 180 days

## NORTH CAROLINA ADMINISTRATIVE CODE

JUNE 95

TITLE	DEPARTMENT	TITLE	DEPARTMENT
2	Agriculture	21	Occupational Licensing Boards
4	Commerce	1 - Acupuncture	
5	Correction	4 - Auctioneer	
10	Human Resources	48 - Physical Therapy Examiners	
12	Justice	53 - Professional Counselors	
13	Labor	54 - Practicing Psychologists	
15A	Environment, Health, and Natural Resources	58 - Real Estate Commission	
17	Revenue	23	Community Colleges
19A	Transportation	24	Independent Agencies
		5 - Health Plan Purchasing Alliance Board	
		25	Personnel
		27	State Bar

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
2 NCAC 34 .0904		✓				07/10/95	180 DAYS
4 NCAC 3C .1001					✓		
.1702					✓		
10A .0502					✓		
.0610					✓		
5 NCAC 5 .0001	✓			✓		07/01/95	
10 NCAC 1B .0420					✓		
18J .0803		✓				07/01/95	
26B .0124		✓		✓		07/01/95	
26G .0406 - .0407 transferred and recodified from 26I .0201 - .0202						07/01/95	



**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	26H	.0213		✓		✓		07/01/95	
			.0401		✓		✓		07/01/95	
26I .0201 - .0202 transferred and recodified to 26G .0406 - .0407									07/01/95	
		45H	.0202		✓				07/01/95	
12	NCAC	11	.0123	✓					07/01/95	
13	NCAC	7F	.0201		✓		✓		07/01/95	
15A	NCAC	2B	.0302		✓		✓		07/01/95	
			.0304		✓		✓		07/01/95	
			.0308		✓		✓		07/01/95	
			.0309		✓		✓		08/01/95	
		2D	.0531		✓		✓		07/01/95	
			.0902		✓				07/01/95	
			.0909		✓				07/01/95	
			.0952		✓				07/01/95	
			.1402		✓		✓		07/01/95	
		7H	.0106					✓		
			.0306		✓				06/27/95	180 DAYS
			.1705					✓		
		10B	.0105 - .0106		✓				07/01/95	
			.0114		✓				07/01/95	
			.0202		✓		✓		07/01/95	
			.0203		✓				07/01/95	
			.0214		✓				07/01/95	
		10D	.0002 - .0003		✓				07/01/95	
		10F	.0317		✓		✓		07/01/95	
			.0354		✓				07/01/95	
		13A	.0009 - .0010		✓				07/01/95	
		16A	.1001		✓				07/01/95	180 DAYS
		18A	.1935		✓		✓		07/01/95	
			.1956		✓		✓		07/01/95	
		20D	.0101		✓				07/01/95	
		21D	.0909		✓				07/01/95	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC	24A	.0202		✓				07/01/95	
			.0402		✓				07/01/95	
17	NCAC	6B	.0605					✓		
19A	NCAC	2B	.0221		✓				07/01/95	
21	NCAC	1	.0104	✓			✓		07/01/95	
			.0301	✓			✓		07/01/95	
		4B	.0102		✓				07/01/95	
			.0104		✓				07/01/95	
		48E	.0110		✓				07/21/95	180 DAYS
		53	.0204		✓		✓		07/01/95	
			.0205	✓			✓		07/01/95	
			.0206 - .0207	✓					07/01/95	
			.0208	✓			✓		07/01/95	
			.0209	✓					07/01/95	
			.0210 - .0211	✓			✓		07/01/95	
			.0301		✓		✓		07/01/95	
			.0305 - .0307	✓					07/01/95	
			.0308 - .0309	✓			✓		07/01/95	
			.0403 - .0405	✓			✓		07/01/95	
			.0601	✓					07/01/95	
			.0602 - .0604	✓			✓		07/01/95	
		54	.2704 - .2706	✓			✓		06/21/95	
		58A	.0110		✓				07/01/95	
			.0504		✓				07/01/95	
			.0505		✓		✓		07/01/95	
			.0506		✓				07/01/95	
			.1703		✓				07/01/95	
			.1707		✓				07/01/95	
			.1708		✓		✓		07/01/95	
			.1710 - .1711		✓				07/01/95	
		58E	.0103		✓		✓		07/01/95	
			.0203		✓		✓		07/01/95	
			.0204		✓				07/01/95	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21	NCAC	58E	.0303		✓		✓		07/01/95	
			.0304 - .0305		✓				07/01/95	
			.0406 - .0407		✓		✓		07/01/95	
			.0506		✓				07/01/95	
			.0515	✓					07/01/95	
23	NCAC	2B	.0104		✓		✓		07/01/95	
24	NCAC	5	.0201 - .0202	✓			✓		07/01/95	
			.0204	✓					07/01/95	
			.0206	✓			✓		07/01/95	
25	NCAC	1C	.0211			✓			07/01/95	
		1E	.0203		✓				07/01/95	
			.0204		✓		✓		07/01/95	
			.0207		✓		✓		07/01/95	
			.0210		✓		✓		07/01/95	
			.0216	✓			✓		07/01/95	
			.0301		✓				07/01/95	
			.0305		✓		✓		07/01/95	
			.0311		✓		✓		07/01/95	
			.0312		✓				07/01/95	
			.0314 - .0315		✓		✓		07/01/95	
			.0317	✓			✓		07/01/95	
			.1302 - .1306		✓		✓		07/01/95	
recodified to		1N	.0000						07/01/95	
		1N	.0100							
			.0202 - .0203	✓					07/01/95	
			.0204	✓			✓		07/01/95	
			.0205	✓					07/01/95	
			.0206	✓			✓		07/01/95	
27	NCAC	1A	.0601		✓				06/01/95	
		1D	.1801		✓				06/01/95	

*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).*

**DEPARTMENT OF COMMUNITY COLLEGES**

**Community Colleges**

23 NCAC 2C .0604 - Program Review	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	07/13/95

**ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

**Coastal Management**

15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	Obj. Cont'd	05/18/95
Rule Returned to Agency	Obj. Cont'd	06/14/95
Agency Filed Rule for Codification Over RRC Objection	Eff.	06/27/95

**Environmental Management**

15A NCAC 2B .0201 - Antidegradation Policy (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0202 - Definitions	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
15A NCAC 2B .0211 - Fresh Surface Water Quality Stds. for Class C Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0211 - Fresh Surface Water Quality Stds. for Class C Waters	RRC Objection	07/13/95
Agency Revised Rule (Noticed in 9:23, 1979)	Obj. Removed	07/13/95
15A NCAC 2B .0212 - Fresh Surface Water Quality Stds. for Class WS-I Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0214 - Fresh Surface Water Quality Stds. for Class WS-II Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0215 - Fresh Surface Water Quality Stds. for Class WS-III Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0216 - Fresh Surface Water Quality Stds. for WS-IV Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0218 - Fresh Surface Water Quality Stds. for Class WS-V Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0219 - Fresh Surface Water Quality Stds. for Class B Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0220 - Tidal Salt Water Quality Stds. for Class SC Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0221 - Tidal Salt Water Quality Stds. for Class SA Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0222 - Tidal Salt Water Quality Stds. for Class SB Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0223 - Nutrient Sensitive Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0224 - High Quality Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0225 - Outstanding Resource Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0226 - Exemptions from Surface Water Quality Standards (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0227 - Water Quality Management Plans (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95

15A NCAC 2B .0228 - Effluent Channels (Noticed in 9:24, 2073)

Rule Withdrawn by Agency

06/14/95

**Health: Epidemiology**

15A NCAC 19A .0202 - Control Measures - HIV

Agency Revised Rule

RRC Objection

06/14/95

Obj. Removed

07/13/95

**HUMAN RESOURCES**

**Facility Services**

10 NCAC 3C .3001 - Definitions	RRC Objection	07/13/95
10 NCAC 3C .3108 - Suspension of Admissions	RRC Objection	07/13/95
10 NCAC 3C .3205 - Discharge of Minor or Incompetent	RRC Objection	07/13/95
10 NCAC 3C .3302 - Minimum Provisions of Patient's Bill of Rights	RRC Objection	07/13/95
10 NCAC 3C .3502 - Bylaws	RRC Objection	07/13/95
10 NCAC 3C .3602 - Responsibilities	RRC Objection	07/13/95
10 NCAC 3C .3603 - Personnel Policies and Practices	RRC Objection	07/13/95
10 NCAC 3C .3607 - Personnel Health Requirements	RRC Objection	07/13/95
10 NCAC 3C .3608 - Insurance	RRC Objection	07/13/95
10 NCAC 3C .3704 - Status	RRC Objection	07/13/95
10 NCAC 3C .3902 - Manager	RRC Objection	07/13/95
10 NCAC 3C .3904 - Patient Access	RRC Objection	07/13/95
10 NCAC 3C .4003 - Policies and Procedures	RRC Objection	07/13/95
10 NCAC 3C .4102 - Classification of Optional Emergency Services	RRC Objection	07/13/95
10 NCAC 3C .4104 - Medical Director	RRC Objection	07/13/95
10 NCAC 3C .4203 - Nursing Staff	RRC Objection	07/13/95
10 NCAC 3C .4303 - Nursing Services Maternal Services	RRC Objection	07/13/95
10 NCAC 3C .4307 - Nursing Staff of Neonatal Services	RRC Objection	07/13/95
10 NCAC 3C .4401 - Organization	RRC Objection	07/13/95
10 NCAC 3C .4502 - Pharmacist	RRC Objection	07/13/95
10 NCAC 3C .4512 - Medications Dispensed	RRC Objection	07/13/95
10 NCAC 3C .4702 - Organization	RRC Objection	07/13/95
10 NCAC 3C .4703 - Sanitation and Safety	RRC Objection	07/13/95
10 NCAC 3C .4704 - Distribution of Food	RRC Objection	07/13/95
10 NCAC 3C .4705 - Nutritional Support	RRC Objection	07/13/95
10 NCAC 3C .4801 - Organization	RRC Objection	07/13/95
10 NCAC 3C .4905 - Tissue Removal and Disposal	RRC Objection	07/13/95
10 NCAC 3C .5002 - Delivery of Care	RRC Objection	07/13/95
10 NCAC 3C .5201 - Psychiatric/Substance Abuse Svcs.: Applicability of Rules	RRC Objection	07/13/95
10 NCAC 3C .5202 - Definitions Applicable/Psychiatric/Substance Abuse Svcs.	RRC Objection	07/13/95
10 NCAC 3C .5205 - Seclusion	RRC Objection	07/13/95
10 NCAC 3C .5302 - Definitions	RRC Objection	07/13/95
10 NCAC 3C .5309 - Nursing/Health Care Administration and Supervision	RRC Objection	07/13/95
10 NCAC 3C .5315 - Dental Care	RRC Objection	07/13/95
10 NCAC 3C .5318 - Activities and Recreation	RRC Objection	07/13/95
10 NCAC 3C .5319 - Social Services	RRC Objection	07/13/95
10 NCAC 3C .5322 - Brain Injury Extended Care Physician Services	RRC Objection	07/13/95
10 NCAC 3C .5323 - Brain Injury Extended Care Program Requirements	RRC Objection	07/13/95
10 NCAC 3C .5324 - Special Nursing Req. Brain Injury Long Term Care	RRC Objection	07/13/95
10 NCAC 3C .5325 - Ventilator Dependence	RRC Objection	07/13/95
10 NCAC 3C .5326 - Physician Services for Ventilator Dependent Patients	RRC Objection	07/13/95
10 NCAC 3C .5403 - HIV Designated Unit Policies and Procedures	RRC Objection	07/13/95
10 NCAC 3C .5405 - Physician Services in a HIV Designated Unit	RRC Objection	07/13/95
10 NCAC 3C .5407 - Use of Investigational Drugs on the HIV Designated Unit	RRC Objection	07/13/95
10 NCAC 3C .5501 - Definitions	RRC Objection	07/13/95

10 NCAC 3C .5502 - Physician Reg. for Inpatient Rehab. Facilities or Units	RRC Objection	07/13/95
10 NCAC 3C .5507 - Comprehensive Rehabilitation Personnel Administration	RRC Objection	07/13/95
10 NCAC 3C .5508 - Comprehensive Inpatient Rehab. Program Staffing Req.	RRC Objection	07/13/95
10 NCAC 3C .5512 - Additional Req. for Traumatic Brain Injury Patients	RRC Objection	07/13/95
10 NCAC 3C .5513 - Additional Req. for Spinal Cord Injury Patients	RRC Objection	07/13/95
10 NCAC 3C .6102 - List of Referenced Codes and Standards	RRC Objection	07/13/95
10 NCAC 3C .6208 - Obstetrical Department Requirements	RRC Objection	07/13/95
10 NCAC 3H .2001 - Definitions	RRC Objection	07/13/95
10 NCAC 3H .2201 - Administrator	RRC Objection	07/13/95
10 NCAC 3H .2202 - Admissions	RRC Objection	07/13/95
10 NCAC 3H .2203 - Patients Not to be Admitted	RRC Objection	07/13/95
10 NCAC 3H .2206 - Medical Director	RRC Objection	07/13/95
10 NCAC 3H .2209 - Infection Control	RRC Objection	07/13/95
10 NCAC 3H .2212 - Quality Assurance Committee	RRC Objection	07/13/95
10 NCAC 3H .2301 - Patient Assessment and Care Planning	RRC Objection	07/13/95
10 NCAC 3H .2302 - Nursing Services	RRC Objection	07/13/95
10 NCAC 3H .2308 - Domiciliary Home Personnel Requirements	RRC Objection	07/13/95
10 NCAC 3H .2401 - Maintenance of Medical Records	RRC Objection	07/13/95
10 NCAC 3H .2501 - Availability of Physician's Services	RRC Objection	07/13/95
10 NCAC 3H .2505 - Brain Injury Long-Term Care Physician Services	RRC Objection	07/13/95
10 NCAC 3H .2506 - Physician Services for Ventilator Dependent Patients	RRC Objection	07/13/95
10 NCAC 3H .2601 - Availability of Pharmaceutical Services	RRC Objection	07/13/95
10 NCAC 3H .2604 - Drug Procurement	RRC Objection	07/13/95
10 NCAC 3H .2605 - Drug Storage and Disposition	RRC Objection	07/13/95
10 NCAC 3H .2606 - Pharmaceutical Records	RRC Objection	07/13/95
10 NCAC 3H .2607 - Emergency Drugs	RRC Objection	07/13/95
10 NCAC 3H .2701 - Provision of Nutrition and Dietetic Services	RRC Objection	07/13/95
10 NCAC 3H .2801 - Activity Services	RRC Objection	07/13/95
10 NCAC 3H .2802 - Social Services	RRC Objection	07/13/95
10 NCAC 3H .3002 - Quality of Specialized Rehabilitation Services	RRC Objection	07/13/95
10 NCAC 3H .3003 - Ventilator Dependence	RRC Objection	07/13/95
10 NCAC 3H .3004 - Brain Injury Long-Term Care	RRC Objection	07/13/95
10 NCAC 3H .3005 - Special Nursing Req. for Brain Injury Long-Term Care	RRC Objection	07/13/95
10 NCAC 3H .3011 - HIV Designated Unit Policies and Procedures	RRC Objection	07/13/95
10 NCAC 3H .3012 - Physician Services in an HIV Designated Unit	RRC Objection	07/13/95
10 NCAC 3H .3013 - Special Nursing Requirements for an HIV Designated Unit	RRC Objection	07/13/95
10 NCAC 3H .3015 - Use of Investigational Drugs for HIV Designated Units	RRC Objection	07/13/95
10 NCAC 3H .3016 - Additional Social Work Req. for HIV Designated Units	RRC Objection	07/13/95
10 NCAC 3H .3021 - Physician Req. for Inpatient Rehab. Facilities or Units	RRC Objection	07/13/95
10 NCAC 3H .3027 - Comprehensive Inpatient Rehab. Program Staffing Req.	RRC Objection	07/13/95
10 NCAC 3H .3031 - Additional Req. for Spinal Cord Injury Patients	RRC Objection	07/13/95
10 NCAC 3H .3103 - Site	RRC Objection	07/13/95
10 NCAC 3H .3201 - Required Spaces	RRC Objection	07/13/95
10 NCAC 3H .3401 - Heating and Air Conditioning	RRC Objection	07/13/95
10 NCAC 3H .3404 - Other	RRC Objection	07/13/95
10 NCAC 3O .0305 - Persons Subject to Licensure	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 3O .0506 - Simplified Reporting for Certain Organizations	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 3O .0607 - License Year	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 3U .0705 - Special Training Requirements	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 3U .1403 - Aquatic Activities	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 3U .1717 - Health, Safety and Sanitation Requirements	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

**RRC has Objected to the Following Repeals in 10 NCAC 3C and 10 NCAC 3H:**

**10 NCAC 3C** .0101 - .0102, .0104 - .0110, .0201 - .0203, .0301 - .0307, .0401 - .0407, .0501 - .0505, .0601 - .0604, .0701 - .0708, .0801 - .0805, .0807, .0901 - .0917, .1001 - .1006, .1101 - .1102, .1201 - .1204, .1301 - .1303, .1401 - .1405, .1501 - .1508, .1510, .1601 - .1606, .1701 - .1717, .1801 - .1805, .1901 - .1912, .1915 - .1932, .2001 - .2008, .2020 - .2033, .2101 - .2105.

**10 NCAC 3H** .0108 - .0109, .0206 - .0220, .0306 - .0318, .0407 - .0409, .0505 - .0507, .0510 - .0517, .0605 - .0609, .0705 - .0712, .0810 - .0812, .0903 - .0911, .1003 - .1008, .1105 - .1109, .1130 - .1136, .1150 - .1163, .1204 - .1208, .1210, .1306 - .1308, .1405 - .1406, .1408 - .1410, .1501 - .1503, .1612 - .1613, .1703 - .1704, .1804 - .1807.

**Medical Assistance**

10 NCAC 26H .0302 - Reporting Requirements	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 26H .0304 - Rate Setting Methods for Non-state Facilities	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 26H .0305 - Allowable Costs	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 26H .0308 - Rate Appeals	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

**INDEPENDENT AGENCIES**

**State Health Plan Purchasing Alliance Board**

24 NCAC 5 .0202 - Establishment of Alliance Market Areas	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	06/14/95
24 NCAC 5 .0401 - Purpose		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0402 - Definitions		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0403 - Application for Membership		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0404 - Participation Requirements		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0405 - Annual Renewal		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0406 - Employer Qualification and Employee Enrollment Period		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0407 - Waiting Period		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0408 - Open Enrollment Period		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0409 - Enrollment Additions Outside Open Enrollment		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0410 - Disenrollment of Member Small Employer		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0411 - Disenrollment of Enrollees		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0412 - Continuation of Benefits		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0413 - Payment to Insurance Agents and Brokers		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0414 - Alliance Participation Fee		
Rule Withdrawn by Agency		06/14/95
Agency Resubmitted Rule	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

24 NCAC 5 .0415 - Notification of Rate Changes		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0416 - Employer Monthly Payment Procedures and Requirements		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0417 - Overdue Payments; Late Fees; Termination		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0418 - Reinstatement Following Termination for Non-Payment		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0419 - Monthly Payments to AHCS		
Rule Withdrawn by Agency		06/14/95

## JUSTICE

### Criminal Justice Education and Training Standards

12 NCAC 9B .0202 - Responsibilities of the School Director	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
12 NCAC 9B .0206 - Basic Training -- Correctional Officers	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
12 NCAC 9D .0104 - Intermediate Law Enforcement Certificate	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
12 NCAC 9D .0105 - Advanced Law Enforcement Certificate	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

## LABOR

### OSHA

13 NCAC 7F .0201 - Construction	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	06/14/95

## LICENSING BOARDS AND COMMISSIONS

### Acupuncture Licensing Board

21 NCAC 1 .0301 - Standards for Continuing Education	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	06/14/95

### Board of Certified Public Accountant Examiners

21 NCAC 8M .0102 - Registration Requirements	RRC Objection	07/13/95
21 NCAC 8M .0104 - Firms Deemed in Compliance	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
21 NCAC 8N .0307 - Firm Names	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

### Board of Nursing Home Administrators

21 NCAC 37 .0502 - Application to Become Administrator-In-Training	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
21 NCAC 37 .0914 - Duplicate Licenses		
Rule Withdrawn by Agency		07/13/95

### Board of Licensed Professional Counselors

21 NCAC 53 .0208 - Supervised Professional Practice	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	06/14/95



21 NCAC 53 .0309 - Agreement to Abide by NCBLPC Ethical Standards	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	06/14/95

**Board of Practicing Psychologists**

21 NCAC 54 .2704 - HSP-P Requirements On and After June 30, 1994	RRC Objection	05/18/95
Rule Returned to Agency	Obj. Cont'd	06/14/95
Agency Filed Rule for Codification Over RRC Objection	Eff.	06/21/95
21 NCAC 54 .2705 - HSP-PP Requirements	RRC Objection	05/18/95
Rule Returned to Agency	Obj. Cont'd	06/14/95
Agency Filed Rule for Codification Over RRC Objection	Eff.	06/21/95
21 NCAC 54 .2706 - HSP-PA Requirements On and After June 30, 1994	RRC Objection	05/18/95
Rule Returned to Agency	Obj. Cont'd	06/14/95
Agency Filed Rule for Codification Over RRC Objection	Eff.	06/21/95

**Real Estate Commission**

21 NCAC 58E .0203 - Application and Criteria for Original Approval	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	06/14/95

**STATE PERSONNEL**

**Office of State Personnel**

25 NCAC 1C .0405 - Temporary Appointment	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
25 NCAC 1C .0407 - Temporary Part-Time Appointment	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
25 NCAC 1D .2001 - Coverage	RRC Objection	07/13/95
Agency Repealed Rule	Obj. Removed	07/13/95
25 NCAC 1E .0305 - Use of Sick Leave	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	06/14/95
25 NCAC 1E .1302 - Policy	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	06/14/95
25 NCAC 1E .1304 - Qualifying to Participate in Voluntary Shared Leave Program	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	06/14/95
25 NCAC 1K .0312 - Eligibility	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
25 NCAC 1N .0201 - Purpose (Noticed in 9:23, 2018)		
Rule Withdrawn by Agency		06/14/95

**TRANSPORTATION**

**Division of Highways**

19A NCAC 2B .0221 - General Motorist Services Signs	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	06/14/95

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ADMINISTRATION</b>				
<i>Division of Purchase and Contract</i>				
Senter-Sanders Tractor Corp. v. Admin., Div of Purchase & Contract	94 DOA 0803	Nesnow	03/06/95	
CMC Maintenance Co., a Div. of RDS Corp. v. Dept. of Administration, Div. of Purchase & Contract, et al.	95 DOA 0194	Phipps	06/13/95	
<i>State Construction Office</i>				
W. M. Piatt & Company v. State Construction Office, DOA	94 DOA 0738	Nesnow	04/11/95	10:03 NCR 221
Holland Group, Inc. v. Dept. of Administration, St. Construction Office	94 DOA 1565	Nesnow	06/01/95	10:07 NCR 619
<b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>				
Ali Alsaras v. Alcoholic Beverage Control Commission	94 ABC 0526	Cheas	05/16/95	
Norman D. Forbes v. Alcoholic Beverage Control Commission	94 ABC 0787	Gray	03/17/95	
Albert Stanley Tomanec v. Alcoholic Beverage Control Commission	94 ABC 1168	Becton	03/07/95	
Robert Johnson v. Alcoholic Beverage Control Commission	94 ABC 1661	West	05/01/95	
Stinking Mercury, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1682	Cheas	05/03/95	
Alcoholic Beverage Control Comm. v. Depot Stop N Go, Inc.	94 ABC 1694	Mann	03/29/95	
John H. Robinson v. Alcoholic Beverage Control Commission	94 ABC 1727	Morrison	05/18/95	
Clara and Carson Young v. Alcoholic Beverage Control Commission	94 ABC 1729	Cheas	05/11/95	
Bryan Lynn Whitaker, Susan Ansley Whitaker v. ABC Commission	94 ABC 1784	Mann	04/19/95	
Diamond Club, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1803	Mann	04/07/95	
Alcoholic Beverage Control Commission v. Weisner, Inc.	95 ABC 0068	West	06/07/95	
Robert Louis Reese v. Alcoholic Beverage Control Commission	95 ABC 0074	Cheas	05/25/95	
Ray E. Bailey v. Alcoholic Beverage Control Commission	95 ABC 0210	Gray	05/01/95	
Legwin Z. Williams v. Alcoholic Beverage Control Commission	95 ABC 0224	Nesnow	05/31/95	10:06 NCR 417
Alcoholic Beverage Control Comm. v. Janice Mae Miles	95 ABC 0434	West	07/20/95	
Imran Ali Hameerah v. Alcoholic Beverage Control Commission and City of Raleigh	95 ABC 0477	Phipps	07/14/95	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
<i>Crime Victims Compensation Commission</i>				
John Pavlikianidis v. Victims Compensation Commission	94 CPS 0237	Morrison	03/21/95	10:02 NCR 176
Fay, Cynthia, S. Dalton v. Crime Victims Compensation Commission	94 CPS 0445*	West	05/30/95	
Phyllis H. Steinmetz v. Crime Victims Compensation Commission	94 CPS 0542	West	05/16/95	
Hubert Johnson, Edna J. Carter v. Crime Victims Compensation Comm.	94 CPS 1177	Mann	06/12/95	
Wayne L. Utley v. Crime Victims Compensation Commission	94 CPS 1180	Becton	03/07/95	
Sandra H. Hughes v. Victims Compensation Commission	94 CPS 1600	Morrison	06/09/95	
Kristine S. Ray v. Crime Victims Compensation Commission	94 CPS 1673	Cheas	04/20/95	
Shirley Moody Myers v. Crime Victims Compensation Commission	94 CPS 1674	Cheas	04/20/95	
Thomasine Inman v. Crime Victims Compensation Commission	94 CPS 1731	Nesnow	03/09/95	
Irmgard Gordos v. Crime Victims Compensation Commission	94 CPS 1782	Gray	03/09/95	
Fay, Cynthia, S. Dalton v. Crime Victims Compensation Commission	95 CPS 0010*	West	05/30/95	
Ellen Sherwin v. Crime Vic Comp James Byrum Emp/ Baptist Hosp	95 CPS 0012	West	03/22/95	
Howard B. Peterson v. Crime Victims Compensation Commission	95 CPS 0163	Reilly	07/06/95	
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Elizabeth F. West v. Department of Human Resources	94 CSE 1455	Nesnow	03/07/95	
John H. Underwood v. Department of Human Resources	94 CSE 1456	Nesnow	04/17/95	
James T. Dudley Jr. v. Department of Human Resources	94 CSE 1457	Nesnow	04/28/95	
Lori Davis Humphrey v. Department of Human Resources	94 CSE 1459	Becton	03/06/95	
Robert L. Freeland, Jr. v. Department of Human Resources	94 CSE 1460	Becton	04/07/95	
Antonio Darden (IV-D #1237637) v. Department of Human Resources	94 CSE 1461	Becton	04/07/95	
Antonio Darden (IV-D #1280116) v. Department of Human Resources	94 CSE 1462	Becton	04/07/95	
Antonio Darden (IV-D #1233347) v. Department of Human Resources	94 CSE 1463	Becton	04/07/95	
Michael Shannon v. Department of Human Resources	94 CSE 1466	Chess	06/09/95	

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Cyrus R. Luallen v. Department of Human Resources	94 CSE 1470	Mann	03/31/95	
Harold Dean Horn v. Department of Human Resources	94 CSE 1471	Mann	03/07/95	
James B. Miller v. Department of Human Resources	94 CSE 1472	Mann	03/07/95	
Glenn Allison v. Department of Human Resources	94 CSE 1473	Gray	03/02/95	
Louis R. Salamone v. Department of Human Resources	94 CSE 1474	Gray	03/09/95	
Lee R. Jones v. Department of Human Resources	94 CSE 1475	Gray	05/19/95	
Randy Norris Willis v. Department of Human Resources	94 CSE 1476	Morrison	03/21/95	
Michael E. Bellamy v. Department of Human Resources	94 CSE 1477	Morrison	03/02/95	
Eddie James Johnson v. Department of Human Resources	94 CSE 1478	Morrison	03/02/95	
Coley C. Matthews v. Department of Human Resources	94 CSE 1479	Morrison	03/21/95	
Willie J. Gadsen v. Department of Human Resources	94 CSE 1480	Reilly	04/10/95	
Joseph K. Gatewood v. Department of Human Resources	94 CSE 1481	Reilly	06/26/95	
Donald Lee Barcliff v. Department of Human Resources	94 CSE 1482	Reilly	04/10/95	
James W. Nunnery v. Department of Human Resources	94 CSE 1484	Nesnow	04/17/95	
Terrance Freeman v. Department of Human Resources	94 CSE 1485	Nesnow	07/11/95	
William Leroy Watkins v. Department of Human Resources	94 CSE 1486	Nesnow	04/17/95	
Bailey White v. Department of Human Resources	94 CSE 1487	Nesnow	05/23/95	
Shannon Woodall v. Department of Human Resources	94 CSE 1488	Becton	07/18/95	
Peter Ian Oliveira v. Department of Human Resources	94 CSE 1489	Becton	03/07/95	
Ronald E. Lewis v. Department of Human Resources	94 CSE 1491	Becton	03/07/95	
Wesley Kelvin Cook v. Department of Human Resources	94 CSE 1492	Becton	04/07/95	
Everett Lee Hunt v. Department of Human Resources	94 CSE 1493	Chess	06/01/95	
Kenneth W. Cahoon v. Department of Human Resources	94 CSE 1494	Chess	07/12/95	
Ricky S. Blake v. Department of Human Resources	94 CSE 1495	Chess	06/22/95	
Rick E. Atkins v. Department of Human Resources	94 CSE 1496	Chess	06/28/95	
Carlos L. Robinson v. Department of Human Resources	94 CSE 1499	Mann	03/31/95	
Eddie O. Toro v. Department of Human Resources	94 CSE 1500	Mann	03/31/95	
Timothy Mark Johnson v. Department of Human Resources	94 CSE 1502	Mann	05/02/95	
Alan W. Karsner v. Department of Human Resources	94 CSE 1503	Mann	05/02/95	
Walter J. Sturdivant v. Department of Human Resources	94 CSE 1504	Gray	06/26/95	
Volna Ramone Gales v. Department of Human Resources	94 CSE 1505	Gray	04/07/95	
Bruce Kelly Jacobs v. Department of Human Resources	94 CSE 1508	Gray	03/31/95	
Tony Collins v. Department of Human Resources	94 CSE 1511	Gray	03/02/95	
Ronald O. Biggs v. Department of Human Resources	94 CSE 1512	Gray	04/07/95	
Keith Dewayne Senters v. Department of Human Resources	94 CSE 1513	Gray	04/28/95	
Marvin B. Harris v. Department of Human Resources	94 CSE 1533	Morrison	03/02/95	
Jay C. Edwards, III v. Department of Human Resources	94 CSE 1534	Morrison	04/06/95	
William Hyman v. Department of Human Resources	94 CSE 1535	Morrison	06/26/95	
Mahalon E. White v. Department of Human Resources	94 CSE 1537	Morrison	04/06/95	
Dennis Ray Alexander v. Department of Human Resources	94 CSE 1538	Reilly	03/03/95	
Joseph R. & Linda M. Grooms v. Department of Human Resources	94 CSE 1539	Reilly	03/07/95	
Robert M. Martin v. Department of Human Resources	94 CSE 1541	Reilly	03/07/95	
Ashton Berry Gatlin v. Department of Human Resources	94 CSE 1542	Reilly	04/10/95	
Louis Cragg III v. Department of Human Resources	94 CSE 1543	West	03/06/95	
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John D. Twine Sr. v. Department of Human Resources	94 CSE 1547	West	07/18/95	
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Kevin Ervin Kelley v. Department of Human Resources	94 CSE 1549	Nesnow	06/02/95	
Ellen Downing v. Department of Human Resources	94 CSE 1553	Nesnow	03/30/95	
Charles R. Hauley v. Department of Human Resources	94 CSE 1554	Becton	03/07/95	
Michael L. Schadler v. Department of Human Resources	94 CSE 1555	Becton	03/07/95	
Owen B. Fisher Jr. v. Department of Human Resources	94 CSE 1562	Becton	04/07/95	
Robin Delmar Goods v. Department of Human Resources	94 CSE 1563	Becton	04/07/95	
Julio Alvarado Jr. v. Department of Human Resources	94 CSE 1564	Becton	05/22/95	
Thomas A. Morgan v. Department of Human Resources	94 CSE 1567	Chess	06/02/95	
Terrence R. McLaughlin v. Department of Human Resources	94 CSE 1569	Chess	03/07/95	
Johnnie V. Johnson v. Department of Human Resources	94 CSE 1570	Chess	06/28/95	
Ward F. Miller v. Department of Human Resources	94 CSE 1571	Chess	04/19/95	
Joel P. Roth v. Department of Human Resources	94 CSE 1572	West	03/14/95	
Atward T. Warren v. Department of Human Resources	94 CSE 1573	West	03/31/95	
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Albert Noah Dunlap v. Department of Human Resources	94 CSE 1577	Reilly	04/10/95	
James E. Davis v. Department of Human Resources	94 CSE 1578	Reilly	04/10/95	
Roger T. Benoy v. Department of Human Resources	94 CSE 1579	Reilly	03/03/95	
Spencer P. Johnson v. Department of Human Resources	94 CSE 1580	Reilly	04/10/95	
James A. Bryant v. Department of Human Resources	94 CSE 1582	Morrison	04/06/95	
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# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Kenneth J. Balfour v. Department of Human Resources	94 CSE 1584	Morrison	03/07/95	
Willie A. Harris v. Department of Human Resources	94 CSE 1586	Morrison	04/06/95	
Walter T. Townsend Jr. v. Department of Human Resources	94 CSE 1587	Gray	04/28/95	
Dennis W. Nolan v. Department of Human Resources	94 CSE 1590	Gray	03/31/95	
Roderick Odell Adams v. Department of Human Resources	94 CSE 1591	Gray	04/07/95	
Jonathan L. Payne II v. Department of Human Resources	94 CSE 1592	Morrison	04/06/95	
Charles Scott Wilhoit v. Department of Human Resources	94 CSE 1594	Reilly	04/21/95	
Mickey Bridgett v. Department of Human Resources	94 CSE 1595	West	05/08/95	
John Kimmons v. Department of Human Resources	94 CSE 1596	Nesnow	04/17/95	
Randolph J. Nunn v. Department of Human Resources	94 CSE 1608	Mann	03/21/95	
David Lester Gordon v. Department of Human Resources	94 CSE 1609	Mann	03/13/95	
Larry James Walker, Jr. v. Department of Human Resources	94 CSE 1610	Chess	06/01/95	
Wade A. Burgess v. Department of Human Resources	94 CSE 1611	Chess	06/09/95	
Gary Jones v. Department of Human Resources	94 CSE 1612	Chess	07/12/95	
Anthony Harrison v. Department of Human Resources	94 CSE 1615	Becton	04/07/95	
Eddie L. Oliver III v. Department of Human Resources	94 CSE 1616	Becton	07/10/95	
Michael D. Tyree v. Department of Human Resources	94 CSE 1619	Becton	04/07/95	
Edward Fisher v. Department of Human Resources	94 CSE 1621	Becton	04/07/95	
Leroy Jones v. Department of Human Resources	94 CSE 1622	Nesnow	07/05/95	
Bernard Cooper v. Department of Human Resources	94 CSE 1623	Nesnow	04/17/95	
William Gray v. Department of Human Resources	94 CSE 1645	Becton	04/25/95	
Edward Lockhart v. Department of Human Resources	94 CSE 1646	Chess	06/02/95	
Jimmy R. Jackson v. Department of Human Resources	94 CSE 1648	Gray	03/09/95	
Mark A. Jones v. Department of Human Resources	94 CSE 1649	Morrison	03/07/95	
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Tony Monzell Perry v. Department of Human Resources	94 CSE 1651	West	04/07/95	
Frank M. Swett v. Department of Human Resources	94 CSE 1652 <sup>4</sup>	Reilly	05/16/95	
James B. Stokes Jr. v. Department of Human Resources	94 CSE 1653	Becton	04/07/95	
Andrew P. Jergens v. Department of Human Resources	94 CSE 1655	Mann	05/22/95	
Nelson Bennett v. Department of Human Resources	94 CSE 1656	Gray	03/02/95	
Eric L. McDonald v. Department of Human Resources	94 CSE 1657	Morrison	04/06/95	
Herbert T. Robertson v. Department of Human Resources	94 CSE 1679	Chess	06/28/95	
Kenny R. Bradshaw v. Department of Human Resources	94 CSE 1700	Reilly	04/10/95	
Eddie Harris Jr. v. Department of Human Resources	94 CSE 1702	Becton	04/07/95	
Ronnie P. Stephens v. Department of Human Resources	94 CSE 1703	Chess	06/28/95	
Anthony B. Gardner v. Department of Human Resources	94 CSE 1704	Mann	05/02/95	
Lewis M. Scarborough v. Department of Human Resources	94 CSE 1725	West	05/25/95	
Robert Larry Martin v. Department of Human Resources	94 CSE 1750	Chess	03/21/95	
Dwane M. Williams v. Department of Human Resources	94 CSE 1759	Nesnow	06/09/95	
Joseph O. Evans v. Department of Human Resources	94 CSE 1766	Chess	03/21/95	
Donald E. Kirby v. Department of Human Resources	94 CSE 1767	Reilly	03/03/95	
Paul R. Ross v. Department of Human Resources	94 CSE 1778	West	03/06/95	
Bobby Dain Massey v. Department of Human Resources	94 CSE 1798	Gray	04/27/95	
Mandel Curry Edwards v. Department of Human Resources	94 CSE 1799 <sup>6</sup>	Gray	05/31/95	
Carol Jeanne Deese v. Department of Human Resources	94 CSE 1814	Morrison	04/27/95	
James Wright Jr. v. Department of Human Resources	94 CSE 1826	Nesnow	07/11/95	
Joyce Ann Wilkinson v. Department of Human Resources	95 CSE 0071	Becton	04/04/95	
Levern Wilson, Jr. v. Department of Human Resources	95 CSE 0073	Chess	06/28/95	
Michael A. Bradford v. Department of Human Resources	95 CSE 0116	Mann	05/25/95	
Clayman R. Norfleet v. Department of Human Resources	95 CSE 0117	Morrison	07/11/95	
Johnny C. Cole v. Department of Human Resources	95 CSE 0118	Reilly	06/22/95	
Rasoul Behboudi v. Department of Human Resources	95 CSE 0147	West	05/18/95	
Walter Swirniak v. Department of Human Resources	95 CSE 0230	West	07/18/95	
William Rann v. Department of Human Resources	95 CSE 0273	Phipps	06/27/95	
Matthew L. Ward v. Department of Human Resources	95 CSE 0280	Phipps	06/27/95	
Sanders Gilliard Hunter v. Department of Human Resources	95 CSE 0284	Phipps	05/22/95	
Derrick Leon Henry v. Department of Human Resources	95 CSE 0321	Chess	07/17/95	
Clarence O. Hilliard v. Department of Human Resources	95 CSE 0371	Reilly	05/25/95	
Rhonda D. Deaton v. Department of Human Resources	95 CSE 0489	Becton	07/05/95	
Rudolph C. Williams v. Department of Human Resources	95 CSE 0492	Gray	07/18/95	

## *Distribution Child Support*

Lisa J. Hill v. DHR, Div. of Social Svcs., Child Support Enf. Section	95 DCS 0239	Phipps	05/02/95
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## *Rockingham County Department of Social Services*

Cryatean Fields v. Rockingham County DSS	95 DHR 0316	Reilly	06/01/95
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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Wake County Social Services</i>				
Grace A. Wright v. Wake County Social Services., Suzanne Woodell and Craig Glenn	94 DHR 1618	Chess	05/03/95	
<b>INSURANCE</b>				
Grace F. Watkins v. Teachers' & St. Emp. Comp. Major Med. Plan	94 INS 1639	Chess	05/24/95	
Billy Gene Campbell v. Department of Insurance	95 INS 0143	Reilly	04/20/95	
<b>JUSTICE</b>				
<i>Alarm Systems Licensing Board</i>				
Patrick P. Sassman v. Alarm Systems Licensing Board	94 DOJ 1825	Reilly	03/09/95	
<i>Education and Training Standards Division</i>				
Ricky Dale McDevitt v. Sheriff's Ed. & Training Stds. Comm.	94 DOJ 1710	Nesnow	05/04/95	10:05 NCR 324
Reginald Keith Goffington v. Criminal Justice Ed. & Training Stds. Comm.	95 DOJ 0028	Becton	06/08/95	
Nervin Joseph DeDeaux v. Criminal Justice Ed. & Training Stds. Comm.	95 DOJ 0029	Reilly	05/16/95	
Tony Lamont Blackmon v. Criminal Justice Ed. & Training Stds. Comm.	95 DOJ 0043	Reilly	06/02/95	
Constance F. Lawrence v. Sheriff's Ed. & Training Stds. Comm.	95 DOJ 0076	Morrison	04/06/95	
Alexander Douglas Jones v. Criminal Justice Ed. & Training Stds. Comm.	95 DOJ 0101	Morrison	06/13/95	10:07 NCR 627
Richard Dan Wuchte v. Criminal Justice Ed. & Training Stds. Comm.	95 DOJ 0401	Nesnow	06/07/95	
<i>Private Protective Services Board</i>				
Lewis Austin Sainsing v. Private Protective Services Board	94 DOJ 1000	Chess	03/03/95	
Marcus T. Williams v. Private Protective Services Board	94 DOJ 1064	Chess	02/24/95	
Melvin Ray Cooper v. Private Protective Services Board	94 DOJ 1635	Reilly	03/09/95	
Donnell E. Morrow, Jr. v. Private Protective Services Board	94 DOJ 1823	Reilly	03/09/95	
Private Protective Services Board v. James C. Purvis	95 DOJ 0018	Chess	05/15/95	
Private Protective Services Board v. Samuel O. Smith	95 DOJ 0133	Chess	05/09/95	
Jann Mitchell Stanley v. Private Protective Services Board	95 DOJ 0420	Morrison	05/24/95	
Donald Wayne Clark v. Private Protective Services Board	95 DOJ 0444	Phipps	07/14/95	10:09 NCR 805
Marvin E. Shackleford v. Private Protective Services Board	95 DOJ 0611	Phipps	07/18/95	
Julius T. Fairley v. Private Protective Services Board	95 DOJ 0612	Phipps	07/20/95	
James L. McLeary, Jr. v. Private Protective Services Board	95 DOJ 0613	Phipps	07/18/95	
<b>LABOR</b>				
<i>Occupational Safety &amp; Health Division</i>				
Lenoir County Public Schools v. Department of Labor, OSHA	95 DOL 0218	Nesnow	05/01/95	
<i>Private Personnel Service Division</i>				
Employment Consultants, Inc. v. Private Personnel Service Division	95 DOL 0209	Morrison	07/07/95	
<i>Wage and Hour Division</i>				
R.J. Scott, Pres. Pirate Enterprises, Inc. v. Labor, Wage & Hour Div.	94 DOL 1524	West	03/23/95	
<b>PUBLIC INSTRUCTION</b>				
Glenn II, on behalf of Glenn II, and Glenn II, Individually v. Charlotte-Mecklenburg County Schools	93 EDC 0549	Chess	03/16/95	
S.M. on Behalf of J.A.M., and S.M., Individually, and J.M. v. Davie County Board of Education	93 EDC 0742	Phipps	05/30/95	
William Hewett v. State Board of Education	94 EDC 0533	Gray	03/31/95	10:02 NCR 179
James Midgett v. State Board of Education	94 EDC 1401	Reilly	05/02/95	
Deborah R. Crouse v. State Board of Education	95 EDC 0003	Chess	04/10/95	
Bobby G. Little v. Department of Public Instruction	95 EDC 0168	Phipps	03/20/95	
Tonya Marie Snipes and Robert Leon Snipes v. Orange County Schools	95 EDC 0225	Mann	05/15/95	
Laverne K. Suggs v. Department of Public Instruction	95 EDC 0384	Nesnow	07/12/95	
Lavern K. Suggs v. Guilford County Schools	95 EDC 0385	Nesnow	06/02/95	
Kenneth G.H. Leftwich v. State Board of Education	95 EDC 0405	Nesnow	05/25/95	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>STATE PERSONNEL</b>				
<i>Caswell County Health Department</i>				
Della Brown v. Caswell County Health Department	94 OSP 0834	Nesnow	06/12/95	
Julie R. Johnson v. Caswell County Health Department	94 OSP 0865	Reilly	03/15/95	
<i>N.C. Central University</i>				
Peter A. Fore v. N.C. Central University	93 OSP 0189	Nesnow	06/13/95	
<i>Department of Commerce</i>				
T. Sherwood Jernigan v. Dept. of Commerce, Savings Institution Div.	94 OSP 0775	West	05/25/95	
<i>Department of Correction</i>				
Nancy Gilchrist v. Department of Correction	94 OSP 0121	West	03/09/95	
Howard Gray Sadler v. Correction, Div. of Adult Probation/Parole	94 OSP 0332	West	05/15/95	
Thomas Wayne Smathers v. Department of Correction	94 OSP 0590	West	03/23/95	
George J. McCleese, Jr. v. Department of Correction	94 OSP 0644	Gray	04/19/95	
Ruth Kearney v. Department of Correction	94 OSP 1807	Becton	03/13/95	
<i>Department of Crime Control and Public Safety</i>				
Betty Sue Whitley v. National Guard Dept. Crime Control & Public Safety	94 OSP 1399	Chess	06/13/95	
<i>Office of the District Attorney</i>				
Shannon Caudill v. Office of the District Attorney for Judicial District 17-B, and Administrative Office of the Courts	95 OSP 0188	Nesnow	03/20/95	
<i>Dorothea Dix Hospital</i>				
Paul E. Hunter v. Dorothea Dix Hospital	95 OSP 0504	Gray	07/12/95	
<i>East Carolina University</i>				
Lillie Mercer Atkinson v. ECU, Dept. of Comparative Medicine, et al.	95 OSP 0038*7	Becton	06/08/95	
Lillie Mercer Atkinson v. ECU, Dept. of Comparative Medicine, et al.	95 OSP 0057*7	Becton	06/08/95	
<i>Edgecombe County Health Department</i>				
Ronald E. Wooten v. Edgecombe County Health Department	94 OSP 1209	Gray	07/10/95	
<i>Department of Environment, Health, and Natural Resources</i>				
Babette K. McKemie v. EHNRR, Div. of Environmental Management	94 OSP 0358	Chess	05/31/95	
<i>Fayetteville State University</i>				
George Benstead v. Fayetteville State University	94 OSP 1597	Nesnow	04/04/95	
Lt. Bobby McEachern v. FSU Police Department	95 OSP 0042*9	Reilly	07/05/95	
Officer Gregor A. Miles v. FSU Police Department	95 OSP 0058*9	Reilly	07/05/95	
<i>Forsyth Stokes Mental Health Center</i>				
Michael Howell v. Forsyth Stokes Mental Health Center	94 OSP 0499	Chesa	03/24/95	
<i>Department of Human Resources</i>				
April Benfield v. Department of Human Resources and Western Carolina Center	94 OSP 1758	Nesnow	06/07/95	
Eugene Hightower, Jr. v. Department of Human Resources, EEO	94 OSP 1811	West	05/04/95	
Rebecca Johnson v. Human Resources, Special Care Center	95 OSP 0138	West	03/31/95	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Cherry Hospital</i>				
William H. Cooke v. DHR, Cherry Hospital	93 OSP 1547	Gray	03/16/95	
<i>Durham County Department of Social Services</i>				
Delores H. Jeffers v. Durham County Department of Social Services	94 OSP 0939	Morrison	06/12/95	
<i>Gaston County Department of Social Services</i>				
Bobbie J. Gilliam v. Gaston County Department of Social Services	94 OSP 0770	West	05/24/95	
<i>Iredell County Department of Social Services</i>				
Vernon E. Grosse v. Iredell County Department of Social Services	94 OSP 0282	Becton	03/09/95	
Bonnie N. Bellamy v. Iredell County Department of Social Services	94 OSP 0739	Chess	03/01/95	10:01 NCR 48
<i>Richmond County Department of Social Services</i>				
Emma Jane Bradley v. Richmond County Dept. of Social Services	95 OSP 0055	Reilly	07/18/95	10:09 NCR 809
<i>Wake County Department of Health</i>				
Regina K. Crowder v. Wake County/Health Dept., Caroline E. Lee, Dir.	94 OSP 1032*8	Nesnow	06/12/95	
Sabrina R. Crowder v. Wake County/Health Dept., Richard Stevens	94 OSP 1072*8	Nesnow	06/12/95	
Thomasine D. Avery v. Wake County/Health Department	94 OSP 1074*8	Nesnow	06/12/95	
<i>Wake County Department of Social Services</i>				
Olivia L. Jordan v. Wake County/Department of Social Services	94 OSP 1179*8	Nesnow	06/12/95	
<i>Department of Labor</i>				
Michael Robert Smith v. Department of Labor	94 OSP 0610	Nesnow	06/09/95	
<i>Lee-Harnett Area Mental Health, Developmental Disabilities, and Substance Abuse Authority</i>				
Julie Dyer v. Lee-Harnett Area MH/DD/SA Authority	94 OSP 0750	Gray	03/20/95	
<i>North Carolina State University</i>				
Artelia S. Clark v. N.C. State University	89 OSP 0612	Nesnow	07/07/95	
Wesley Brown v. N.C. State University	94 OSP 1173	Reilly	06/30/95*	10:08 NCR 700
David L. Bauer v. North Carolina State University	95 OSP 0044	Morrison	04/25/95	
Billy Ray Kelly v. NCSU Physical Plant	95 OSP 0130	West	03/22/95	
Heather Ann Waskiewicz v. NCSU, Dept. of Public Safety	95 OSP 0213	Phipps	07/06/95	
<i>Orange-Person-Chatham Mental Health</i>				
Patricia A. Harris v. Orange-Person-Chatham Mental Health	95 OSP 0162	West	04/11/95	
<i>Department of Transportation</i>				
Michael E. Kornegay v. Department of Transportation	93 OSP 1700	Gray	03/24/95	
Robert F. Goins v. Department of Transportation	94 OSP 0281	Chess	05/30/95	
Esther Doe Murphy v. Department of Transportation	95 OSP 0114	Gray	07/10/95	
<i>University of North Carolina</i>				
Beth Ann Miller v. UNC Student Health	94 OSP 0800	Nesnow	05/25/95	
<i>UNC Hospitals</i>				
David Patrick Malone v. Univ. of NC Hospital at Chapel Hill	94 OSP 0771	Becton	03/14/95	
Lillian C. Daniels v. UNC Hospital	95 OSP 0056	Morrison	05/11/95	

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**CONTESTED CASE DECISIONS**

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Wake County</i>				
Mark Morgan v. Wake County	94 OSP 0937	Nesnow	04/28/95	10:04 NCR 287
<b>STATE TREASURER</b>				
John W. Parris v. Bd. of Trustees//NC Local Gov. Emp. Retirement Sys.	91 DST 1093	Nesnow	05/04/95	
Channie S. Chapman v. Bd/Trustees//NC Local Gov. Emp. Ret Sys.	94 DST 0443	Morrison	05/15/95	
Bryan L. Basden v. Retirement Systems Division	95 OSP 0171	Chcas	06/21/95	
Wayne La Broad v. Bd./Trustees//Teachers/St. Emp. Retirement Sys.	95 DST 0219	Morrison	07/14/95	

V.

**NORTH CAROLINA PRIVATE PROTECTIVE  
SERVICES BOARD,  
Respondent.**

## PROPOSAL FOR DECISION

## APPEARANCES

Petitioner was represented by Attorney W. Randall Stroud.

Respondent appeared and was represented by Attorney Charles F. McDarris.

**WITNESSES**

Petitioner - Battalion Chief Donald Hannan  
Donald W. Clark

Respondent - Lou Rogers, Investigator  
Assistant Fire Chief Bill Bibby

## ISSUE

Whether Petitioner can establish 1800 hours of verifiable investigative experience while employed as a Fire Captain with the Durham County Fire Department.

## STIPULATIONS

Respondent stipulates that Petitioner presented sufficient documentation prior to the hearing to verify 1200 hours of investigative experience within the past 10 years while employed with the Durham Police Department, a position he held prior to his employment with the Durham County Fire Department.

### BURDEN OF PROOF

Petitioner has the burden of proving 1800 hours of verifiable experience as an investigator with the Durham County Fire Department.

## STATUTES AND RULES APPLICABLE TO THE CONTESTED CASE

Official notice is taken of the following statutes and rules applicable to this case:

N.C.G.S. §§ 74C-2; 74C-3(a)(8); 74C-5(2); 74C-8; 12 NCAC 7D section .0200; 12 NCAC 7D section .0400.

## EXHIBITS

Petitioner introduced the following exhibit:

1. Exhibit 1 - Memo from Don Hannan dated 2/12/95.

Respondent introduced the following exhibits:

- |    |           |   |   |
|----|-----------|---|---|
| 1. | Exhibit 1 | - | Copy of Petitioner's application filed with the Respondent.   |
| 2. | Exhibit 2 | - | Copy of Petitioner's job description as Fire Captain with the Durham County Fire Department.  |
| 3. | Exhibit 3 | - | Letter mailed to Petitioner notifying him of the denial of his application for a private investigator's license for lack of experience. |

**FINDINGS OF FACT**

1. Battalion Chief Donald Hannan (hereinafter "Chief Hannan") testified that he had known the Petitioner for 24 or 25 years.
2. Chief Hannan had directly supervised the Petitioner for the last few years.
3. Chief Hannan stated that he had assigned Petitioner numerous background checks, probably greater than ten over the past five years, to perform on applicants for employment. It was not part of the Petitioner's job description to perform background investigations, but was part of the duties that Chief Hannan asked him to perform.
4. Chief Hannan also directly supervised Petitioner during fire response.
5. As part of his duties as Captain, Petitioner was required to make an initial determination as to whether or not to call the full time arson investigator onto the scene, which meant that the Petitioner had to make an initial determination as to the cause and origin of the fire.
6. If the Captain determined from his initial investigation that a fire was a potential arson, then the Captain would report to the Chief who would then call the arson investigators to conduct a complete investigation of the fire scene.
7. If the initial investigation concludes that more than half of the structure is destroyed by fire or that there was more than \$20,000 damage to the structure, then a full time arson investigator is always called to the scene. However, an arson investigator may be called if other evidence of arson is found at a fire where there is not \$20,000 damage or more than half structural damage.
8. If an arson investigator was called to the scene, then the Petitioner usually would not be required to go back to the scene.
9. Chief Hannan testified that he had no documentation to show the number of investigative hours that Petitioner possessed.
10. Chief Hannan testified that he has "no conceivable idea how many hours he [Petitioner] has." (Tape 1, counter #645).
11. Petitioner testified on his own behalf that he had been employed with the Durham County Fire Department from 1985 through 1994.
12. Petitioner testified that he had a high school diploma.
13. Petitioner testified that he conducted ten to fifteen and maybe twenty background investigations on applicants for employment with the fire department.
14. Petitioner testified that he spent anywhere from two to ten hours on the backgrounds. Petitioner stated that "it's hard to be specific [as to the number of hours]."
15. Petitioner approximated 85 fire calls per year from 1988 through 1994.
16. Petitioner guessed that he would spend approximately four hours on each fire scene from driving up and putting out the fire until the trucks left, but he doesn't know how many hours he would spend investigating the fire.
17. Petitioner wrote a report for each fire incident but doesn't know where the reports are currently located or what the department does with them; therefore, Petitioner could only guess at the number of investigative hours he had accumulated.

18. Assistant Chief Bill Bibby (hereinafter "Assistant Chief Bibby") testified that he had been employed with the Durham Fire Department since 1985, and that he was both Battalion Chief Hannan's supervisor and Petitioner's supervisor.
19. Assistant Chief Bibby testified that a captain would spend only a small amount of time investigating each fire, and once the initial determination of possible arson was made, a full time arson investigator would be called to the scene.
20. Durham County Fire Department employs full time arson investigators who are on call 24 hours a day.
21. Assistant Chief Bibby estimated that a captain would spend at the most 30 to 45 minutes investigating a fire to make his initial determination of the possibility of arson. Assistant Chief Bibby stated that he didn't know why a captain would be that wrapped up in an investigation since full time arson investigators are on duty 24 hours a day and have the specific duty of doing the fire investigations.
22. Approximately 15% to 20% of fires are suspected to be started by arsonists.
23. Lou Rogers testified that the Board always requires a review of job descriptions, letters, pay records, incident reports or other documentation to verify an applicant's experience, and such documentation was required to assure that the applicant had the experience he claimed and was not in fact falsifying his experience.
24. The Petitioner did not submit any documentation to Ms. Rogers to verify his experience, other than Petitioner's Exhibit 1 and several uncompleted report forms.

#### CONCLUSIONS OF LAW

1. Pursuant to N.C.G.S. 74C-2, no person may engage in the private protective services profession without being properly licensed.
2. Pursuant to N.C.G.S. 74C-3(a)(8), any person who holds himself out as a private investigator on a contractual basis is defined as engaged in the private protective services profession and is therefore required to be licensed.
3. Pursuant to N.C.G.S. 74C-5(2), the Board is granted the authority to determine minimum qualifications, experience, and training standards for applicants.
4. Pursuant to N.C.G.S. 74C-8(b)(6), an applicant must submit an application for a license and must include any information, evidence, statements, or documentation as may be required by the Board.
5. N.C.G.S. 74C-8(d)(4) states:

the Board shall conduct a background investigation during the course of which the applicant shall be required to show that he meets all the following requirements and qualifications hereby made prerequisite to obtaining a license:

  - (4) That he has the necessary training, qualifications, and experience in order to determine the applicant's competency and fitness as the Board may determine by rule for all licenses to be issued by the Board.
6. Pursuant to 12 NCAC 7D .0401, an applicant for a private investigator's license must establish to the Board's satisfaction three years of verifiable experience within the past 10 years while conducting investigations as defined in G.S. 74C-3(a)(8).
7. 12 NCAC 7D .0204 sets forth one year of experience as equal to 1,000 hours.
8. 12 NCAC 7D .0204 states that an applicant must be prepared to make available upon request written documentation and/or verification of experience.
9. The court concludes, viewing the evidence in the light most favorable to the Petitioner, that the Petitioner conducted 20 background investigations and spent ten hours on each investigation; therefore, Petitioner has 200 hours of investigative time for this activity.



10. The court concludes, viewing the evidence in the light most favorable to the Petitioner, that Petitioner participated in 595 fire calls (calculated by his testimony of 85 calls per year between 1988 and 1994) and that he spent 45 minutes investigating each call (as estimated by Assistant Chief Bibby to the maximum amount of investigative time on each call) for a total of 446.25 hours (.75 hours x 595 calls) of investigative experience.
11. The court concludes that Petitioner has 646.25 hours of verifiable investigative experience (446.25 hrs. + 200 hrs.), as viewed in the light most favorable to the Petitioner.
12. Any other experience referenced by the Petitioner or other witnesses was purely a guess and such references could neither prove nor disprove the Petitioner's experience.
13. Pursuant to the United States Constitution, the North Carolina Constitution, the North Carolina Administrative Procedures Act, and the North Carolina Private Protective Services Act, the Board must act fairly toward each applicant and must not act arbitrarily and capriciously; therefore, the Board must establish definable guidelines by which to gauge each applicant's experience, and has set forth those guidelines to require each applicant to submit documentation to prove experience.

#### PROPOSAL FOR DECISION

The North Carolina Private Protective Services Board will make the final decision in this contested case. It is proposed that the Board deny the Petitioner's application for a private investigators license for lack of experience. It is further proposed that the Board grant the applicant a Private Investigator Trainee Permit, which will allow the applicant to pursue his interests in the profession while gaining the required experience.

#### ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, NC 27611-7447, in accordance with G.S. 150B-36(b).

#### NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact and to present oral and written arguments to the agency pursuant to G.S. 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Private Protective Services Board.

This the 14th day of July, 1995.

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Meg Scott Phipps  
Administrative Law Judge

v.

**RICHMOND COUNTY DEPARTMENT OF  
SOCIAL SERVICES,  
Respondent.**

### RECOMMENDED DECISION

Mr. Kenneth A. Swain represented the Petitioner. Mr. John T. Page, Jr. represented the Respondent. The Petitioner presented ten witnesses and introduced Exhibits #2, 6(a)-(f), 10 and 14(a)-(d). The Respondent presented four witnesses and introduced Exhibits #1-6 and 8. Proposed Findings of Fact were filed on July 3 and 5, 1995.

1. Did the Respondent properly dismiss the Petitioner?
2. Was the Petitioner's dismissal the result of discrimination based on a handicapping condition?
3. Was the Petitioner's dismissal the result of discrimination based on race?
4. Was the Petitioner's dismissal the result of retaliation?

1. At the time of the hearing the Petitioner was 48 years of age. The Petitioner is a white woman. She had been a permanent employee of the Respondent prior to her termination on October 4, 1994. She worked approximately six years as an Income Maintenance Caseworker. The Petitioner processed documentation for medicaid recipients.
2. The Petitioner is a citizen and resident of Richmond County, North Carolina.
3. In September, 1993, Petitioner required surgery on her lower back for spinal stenosis which included a lumbar laminectomy with decompression.
4. Petitioner requested and was granted leave without pay in September, 1993, to recover from surgery. Petitioner was released by her doctor to return to work at a reduced schedule of four to six hours per day beginning October 18, 1993. The Respondent requested that she not return to work until November 5, 1993. The Petitioner initially worked four hours per day. On November 22, 1993, Petitioner's hours were increased to six. She was released by her doctor to work eight hours per day on December 31, 1993.
5. The Petitioner's working conditions aggravated her impairment and exacerbated her pain.
  - a. Several times a day, the Petitioner was required to retrieve files from boxes placed on the floor. This required bending at the waist, an activity which caused persistent pain.
  - b. Several times a day, the Petitioner was required to retrieve files from file cabinets. These cabinets were filled beyond capacity, heavy and difficult to open.
  - c. The Petitioner requested but was not provided a suitable work station. She sat on a metal frame chair which was in generally poor condition. The chair's arms were too high to slide under the desk. The Petitioner was forced to sit on the front edge of the chair to reach the desk top. As a result, her back

was not supported and she suffered constant pain. On one occasion, the Petitioner slid off the chair and onto the floor.

6. The Petitioner's situation was well known to her co-workers and supervisors.
  - a. Several co-workers, including her immediate supervisor, testified as to the necessity of the Petitioner retrieving files from the floor and the overfilled file cabinets.
  - b. For a brief period of time, the Petitioner was provided with a table, so that she would not have to bend to the floor to retrieve files. This was a significant assistance to the Petitioner. However, it was removed by the Respondent without any discussion with the Petitioner.
  - c. The Petitioner regularly complained of being in pain. Once, the Petitioner was reduced to tears.
  - d. A co-worker brought a back support device to attach to the Petitioner's chair. Unfortunately, the device was not designed for the Petitioner's type of chair.
  - e. In December, 1993, the Petitioner requested a suitable chair. The Respondent was shown the condition of the Petitioner's chair.
7. The Petitioner's pain mandated additional medical treatment, including epidural injections. She missed two days of work after each treatment. As a result of necessary medical care, the Petitioner exhausted all sick, vacation and other paid leave and had to request leave without pay for any additional time she needed to be absent from work.
8. In August, 1994, the Petitioner submitted a request for leave without pay for the week of September 26, 1994. At the time the request was made the Petitioner told co-workers that she did not know what she would do if the request was denied, because she could no longer endure her present physical discomfort without some relief.
9. Approximately three weeks after the request for leave without pay was made and one week prior to the requested leave period, the request was denied by the County Manager, Mr. Richard Tillis.
10. After the request for leave was denied Petitioner's husband placed several telephone calls to the County Manager in an attempt to explain that the need for the time off was not for vacation but for relief from pain. The County Manager eventually took a phone call from Mr. Bradley but indicated that the decision to deny the Petitioner's request for leave had already been made and it would not be reversed.
11. On September 22, 1995, the Petitioner attempted to obtain an appointment with her treating Orthopedic Specialist, Dr. George Ferre. She was unable to obtain an appointment; Dr. Ferre was going to be out-of-town the next week. The petitioner was prescribed medication and given an appointment for when Dr. Ferre returned.
12. The Petitioner spent the week of September 26, 1995, at the beach. The Petitioner and her husband called the Respondent and stated that the petitioner was unable to work that week.
13. The Petitioner returned to a pre-dismissal conference. The Petitioner again informed the Respondent of her recurrent problems and the unsuccessful attempt to obtain an appointment with her treating physician. The Petitioner was dismissed.
14. On the following Monday, the Petitioner had an appointment with the doctor. Dr. Ferre testified concerning the Petitioner's medical condition:
  - a. The Petitioner had been a patient since February, 1993. The petitioner had spinal stenosis, arthritis and a herniated disk of her lumbar spine.
  - b. The doctor performed a lumbar laminectomy which confirmed the Petitioner's diagnosis and indicated that at the L5-S1 level of the spine a ruptured disk was found.
  - c. The Petitioner was gradually released to return to work. A complete return was made in January, 1994. The Petitioner suffered from a permanent condition with regular pain and some numbness in her right leg. She was given six to eight epidural injections in an effort to alleviate this pain. She was prescribed Lorcet Plus for alleviation of pain on several occasions.

- d. The surgery did not provide the positive result for which the doctor had hoped. The back pain associated with her condition was not relieved.
  - e. The lifting up of the Petitioner's torso after bending over to retrieve files could certainly create pain for the Petitioner. The pulling and pushing of file drawers which were difficult to open could also serve to create pain for the Petitioner if done on a regular and daily basis.
  - f. A letter from the Respondent regarding the Petitioner's absences from work was shown to Dr. Ferre. He indicated that if this was the total number of days absent from work from September of 1993 to September of 1994, the Petitioner had missed less work than the average person would be expected to under the same physical condition and receiving the same treatment.
  - g. The medical records confirmed that the Petitioner could not participate in all of her physical therapy due to work conflicts. The records reflected that the Petitioner attempted to obtain an appointment with the doctor on September 22, 1995, but she was unable to do so. The Petitioner visited the doctor on October 3, 1995, wherein he referred the Petitioner to a pain clinic in an attempt to alleviate her problems.
  - h. Dr. Ferre prepared a letter for the Respondent where he stated that the Petitioner's absence from work was due to a medical necessity because her condition had worsened significantly.
15. Requests for leave without pay must be approved by the County Manager. On August 29, 1994, the petitioner wrote:
- I would like to request five (5) days leave without pay for an annual family vacation. The dates for this leave will be 09-26-94 through 09-30-94.
16. The request was denied. The manager responded:
- Your request does not involve an emergency. Each time an employee is absent, an additional work burden is placed on others in the work place. The more responsible approach would have been to reserve some annual leave for this occasion.
17. During the twelve months prior to her August 29, 1994, request, the Petitioner had taken leave without pay for 60 days, annual leave for 9.25 days, sick leave for 7.97 days and petty leave for 1.53 days.
18. The Petitioner took unapproved leave without pay. The Respondent wrote to Petitioner on October 4, 1994:
- Your decision to take leave - after having been denied such leave - constitutes an act of insubordination. Because of this unacceptable personal conduct your employment with the Richmond County Department of Social Services is hereby terminated effective October 4, 1994.
19. There was no credible evidence of racial discrimination or retaliation.

#### CONCLUSIONS OF LAW

- 1. The Petitioner was a permanent employee of the Richmond County Department of Social Services and therefore subject to the protection of the State Personnel Act, GS Chapter 126.
- 2. The State Employee's Handbook defines insubordination as the refusal to accept a reasonable and proper assignment from an authorized supervisor. The refusal which is the basis of the offense must be a willful refusal, and the reasonableness of the assignment must be determined in light of the relative circumstances existing at the time of the incident, and in light of the employee's reasonable perception of those circumstances. The conduct of the employee cannot be termed willful misconduct if it is determined that the employee's actions were reasonable and taken with good cause. Urback v. East Carolina University, 105 NC App 605, 608, 414 SE 2d 100,102, (1992). (Citations omitted.)
- 3. The Petitioner's taking of unapproved leave without pay was a medical necessity because her condition had worsened significantly. Considered in light of the relative circumstances, the denial of leave without pay by the Respondent was not reasonable. The Petitioner's taking of leave without pay was not willful misconduct when both her attempt to obtain prior approval and the degree of her pain are considered. A reasonable and proper response by the Respondent, both before and after the Petitioner's taking of unapproved leave without pay, would have been consideration of 25 NCAC 1D .0519 concerning separation on the basis of unavailability.

4. The Petitioner was not insubordinate. She was not dismissed for just cause.

5. 25 NCAC 1D .0519(a) and (b) provide:

An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave without pay for reasons deemed sufficient by the agency. Such reasons include, but are not limited to, lack of suitable temporary assistance, criticality of the position, budgetary constraints, etc. Such a separation is an involuntary separation, and not a disciplinary dismissal as described in GS 126-35, and may be grieved or appealed.

Prior to separation, the employing agency shall meet with or at least notify the employee in writing, of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful. The employee shall have the opportunity in this meeting or in writing to propose alternative methods of accommodation. If the proposed accommodations are not possible, the agency must notify the employee of that fact and the proposed date of separation. If the proposed accommodations or alternative accommodations are being reviewed, the agency must notify the employee that such accommodations are under review and give the employee a projected date for a decision on this.

6. The Respondent failed to comply with 25 NCAC 1D .0519(a) and (b). The Respondent introduced no evidence of lack of suitable temporary assistance, criticality of the position, budgetary constraints, etc. to support the denial of leave without pay. Furthermore, the Respondent did not notify the Petitioner of efforts undertaken to avoid separation and did not afford the Petitioner the opportunity to propose accommodations. In fact, the Respondent did not provide a suitable chair and removed a table upon which Petitioner could place files.

7. The Respondent did not properly dismiss the Petitioner.

8. The Petitioner is a "handicapped person" as defined in GS 160A-3(4) and a "qualified handicapped person" under GS 168A-3(9).

9. The Respondent failed to provide reasonable accommodations to the Petitioner by failing to make accommodations which would have enabled her to perform the job of Income Maintenance Caseworker. Reasonable accommodations would include providing a suitable chair and a table upon which Petitioner could place files.

10. The Petitioner's dismissal was the result of discrimination based on a handicapping condition.

11. The Petitioner's dismissal was not the result of discrimination based on race or retaliation.

#### RECOMMENDED DECISION

It is recommended that the Petitioner be reinstated with back pay and attorney fees. It is also recommended that the Respondent provide reasonable accommodations to the Petitioner.

#### NOTICE

The State Personnel Commission will make a final decision in this contested case concerning the discrimination and retaliation issues but will make an advisory decision concerning the dismissal issue. The parties have the right to file exceptions to this recommended decision and to present written arguments to this agency. The agency will mail a copy of its decision to the parties, the attorneys of record and the Office of Administrative Hearings.

This the 17th day of July, 1995.

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Robert Roosevelt Reilly, Jr.  
Administrative Law Judge

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

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4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
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8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
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.0401 - .0402	10:02 NCR 150	07/01/95			08/01/95	
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.0701	10:07 NCR 585	10/01/95				
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2 NCAC 34 .0904	10:04 NCR 228	08/01/95			N/A	Renoticed in 10:7
.0904	10:07 NCR 430	11/01/95				
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.0909	10:01 NCR 13	07/01/95	x	x	07/01/95	
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	10:03 NCR 195	04/15/95				
13B .0101	10:06 NCR 350	10/01/95				
.0103	10:06 NCR 350	10/01/95				
.0503	10:06 NCR 350	10/01/95				
.0802 - 0829	10:06 NCR 350	10/01/95				
.1627	10:06 NCR 350	10/01/95				
16A .1001	10:07 NCR 582	01/01/96	x			
.1002 - .1006	10:07 NCR 582	01/01/96				
18A .2508	10:06 NCR 350	01/01/96				
.2511	10:06 NCR 350	01/01/96				
.2516 - .2519	10:06 NCR 350	01/01/96				
.2521 - .2524	10:06 NCR 350	01/01/96				
.2526	10:06 NCR 350	01/01/96				
.2528 - .2535	10:06 NCR 350	01/01/96				
.2537	10:06 NCR 350	01/01/96				
.2540 - .2543	10:06 NCR 350	01/01/96				
19A .0401	10:06 NCR 350	10/01/95				
.0406	10:06 NCR 350	10/01/95				
.0502	10:06 NCR 350	10/01/95				
19C .0206	10:05 NCR 305	10/01/95	x			
19H .0702	10:07 NCR 582	10/01/95	x			



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24A .0404 10:06 NCR 350 10/01/95 x

## FINAL DECISION LETTERS

Voting Rights Act 10:01 NCR 02  
10:03 NCR 194  
10:05 NCR 298

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Number 73	10:02 NCR 54	03/15/95
Number 74	10:02 NCR 54	03/27/95
Number 75	10:03 NCR 191	03/30/95
Number 76	10:03 NCR 191	04/03/95
Number 77	10:05 NCR 297	05/02/95
Number 78	10:06 NCR 336	05/23/95
Number 79	10:07 NCR 427	06/07/95
Number 80	10:07 NCR 427	06/13/95
Number 81	10:08 NCR 639	06/27/95

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10	NCAC	03D	.1401	10:08	NCR	641	11/01/95
		03H	.0108 - .0109	10:02	NCR	58	09/01/95
			.0206 - .0220	10:02	NCR	58	09/01/95
			.0306 - .0318	10:02	NCR	58	09/01/95
			.0407 - .0409	10:02	NCR	58	09/01/95
			.0505 - .0507	10:02	NCR	58	09/01/95
			.0510 - .0517	10:02	NCR	58	09/01/95
			.0605 - .0609	10:02	NCR	58	09/01/95
			.0705 - .0712	10:02	NCR	58	09/01/95
			.0810 - .0812	10:02	NCR	58	09/01/95
			.0903 - .0911	10:02	NCR	58	09/01/95
			.1003 - .1008	10:02	NCR	58	09/01/95
			.1105 - .1109	10:02	NCR	58	09/01/95
			.1130 - .1136	10:02	NCR	58	09/01/95
			.1150 - .1163	10:02	NCR	58	09/01/95
			.1204 - .1208	10:02	NCR	58	09/01/95
			.1210	10:02	NCR	58	09/01/95
			.1306 - .1308	10:02	NCR	58	09/01/95
			.1405 - .1406	10:02	NCR	58	09/01/95
			.1408 - .1410	10:02	NCR	58	09/01/95
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			.1703 - .1704	10:02	NCR	58	09/01/95
			.1804 - .1807	10:02	NCR	58	09/01/95
			.2001	10:02	NCR	58	09/01/95
			.2101 - .2110	10:02	NCR	58	09/01/95
			.2201 - .2212	10:02	NCR	58	09/01/95
			.2301 - .2308	10:02	NCR	58	09/01/95
			.2401 - .2402	10:02	NCR	58	09/01/95
			.2501 - .2506	10:02	NCR	58	09/01/95
			.2601 - .2607	10:02	NCR	58	09/01/95
			.2701	10:02	NCR	58	09/01/95
			.2801 - .2802	10:02	NCR	58	09/01/95
			.2901 - .2902	10:02	NCR	58	09/01/95
			.3001 - .3005	10:02	NCR	58	09/01/95
			.3011 - .3016	10:02	NCR	58	09/01/95
			.3021 - .3032	10:02	NCR	58	09/01/95
			.3101 - .3104	10:02	NCR	58	09/01/95
			.3201 - .3202	10:02	NCR	58	09/01/95
			.3301 - .3302	10:02	NCR	58	09/01/95
			.3401 - .3404	10:02	NCR	58	09/01/95
		03L	.0901 - .0907	10:08	NCR	641	02/01/96
			.1001 - .1007	10:08	NCR	641	02/01/96

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	.1401 - .1402	10:08 NCR 641	02/01/96			
03M	.0202 - .0205	10:08 NCR 641	02/01/96			
	.0207	10:08 NCR 641	02/01/96			
14B	.0501 - .0503	10:07 NCR 430	05/01/96			
	.0505 - .0509	10:07 NCR 430	05/01/96			
14K	.0101 - .0103	10:07 NCR 430	05/01/96			
	.0201 - .0219	10:07 NCR 430	05/01/96			
	.0301 - .0310	10:07 NCR 430	05/01/96			
	.0312 - .0315	10:07 NCR 430	05/01/96			
	.0317 - .0324	10:07 NCR 430	05/01/96			
	.0326 - .0329	10:07 NCR 430	05/01/96			
	.0333 - .0348	10:07 NCR 430	05/01/96			
	.0350 - .0365	10:07 NCR 430	05/01/96			
	.0401 - .0408	10:07 NCR 430	05/01/96			
14L	.0101 - .0106	10:07 NCR 430	05/01/96			
	.0201 - .0203	10:07 NCR 430	05/01/96			
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	.0310	10:07 NCR 430	05/01/96			
	.0401 - .0407	10:07 NCR 430	05/01/96			
	.0601 - .0606	10:07 NCR 430	05/01/96			
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	.0611 - .0615	10:07 NCR 430	05/01/96			
	.0701 - .0709	10:07 NCR 430	05/01/96			
	.0711 - .0712	10:07 NCR 430	05/01/96			
14M	.0101 - .0113	10:07 NCR 430	05/01/96			
	.0501 - .0511	10:07 NCR 430	05/01/96			
	.0601 - .0602	10:07 NCR 430	05/01/96			
	.0604	10:07 NCR 430	05/01/96			
	.0606	10:07 NCR 430	05/01/96			
	.0608 - .0612	10:07 NCR 430	05/01/96			
	.0614 - .0615	10:07 NCR 430	05/01/96			
	.0617 - .0621	10:07 NCR 430	05/01/96			
	.0701 - .0716	10:07 NCR 430	05/01/96			
14N	.0101 - .0107	10:07 NCR 430	05/01/96			
	.0201 - .0207	10:07 NCR 430	05/01/96			
	.0301 - .0307	10:07 NCR 430	05/01/96			
	.0401 - .0406	10:07 NCR 430	05/01/96			
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	.0701	10:07 NCR 430	05/01/96			
	.0703 - .0705	10:07 NCR 430	05/01/96			
	.0801 - .0811	10:07 NCR 430	05/01/96			
	.0901 - .0905	10:08 NCR 656	05/01/96			
14O	.0301 - .0314	10:07 NCR 430	05/01/96			
	.0401 - .0409	10:07 NCR 430	05/01/96			
	.0411 - .0416	10:07 NCR 430	05/01/96			
	.0501 - .0505	10:07 NCR 430	05/01/96			
	.0601 - .0609	10:07 NCR 430	05/01/96			
	.0611 - .0615	10:07 NCR 430	05/01/96			
	.0617 - .0618	10:07 NCR 430	05/01/96			
	.0701 - .0710	10:07 NCR 430	05/01/96			
14V	.0101 - .0104	10:07 NCR 430	05/01/96			
	.0201 - .0208	10:07 NCR 430	05/01/96			
	.0301 - .0304	10:07 NCR 430	05/01/96			
	.0401 - .0405	10:07 NCR 430	05/01/96			
	.0501 - .0505	10:07 NCR 430	05/01/96			
	.0601 - .0604	10:07 NCR 430	05/01/96			
	.0701 - .0712	10:07 NCR 430	05/01/96			
	.0801 - .0805	10:07 NCR 430	05/01/96			
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.1501 - .1504	10:07 NCR 430	05/01/96				
.2101 - .2104	10:07 NCR 430	05/01/96				
.2201 - .2204	10:07 NCR 430	05/01/96				
.2301 - .2306	10:07 NCR 430	05/01/96				
.2401 - .2404	10:07 NCR 430	05/01/96				
.2501 - .2505	10:07 NCR 430	05/01/96				
.3101 - .3103	10:07 NCR 430	05/01/96				
.3201 - .3203	10:07 NCR 430	05/01/96				
.3301 - .3303	10:07 NCR 430	05/01/96				
.3401 - .3403	10:07 NCR 430	05/01/96				
.3501 - .3503	10:07 NCR 430	05/01/96				
.3601 - .3604	10:07 NCR 430	05/01/96				
.3701 - .3703	10:07 NCR 430	05/01/96				
.3801 - .3803	10:07 NCR 430	05/01/96				
.3901 - .3903	10:07 NCR 430	05/01/96				
.4001 - .4003	10:07 NCR 430	05/01/96				
.4101 - .4104	10:07 NCR 430	05/01/96				
.5001 - .5002	10:07 NCR 430	05/01/96				
.5101 - .5104	10:07 NCR 430	05/01/96				
.5201 - .5204	10:07 NCR 430	05/01/96				
.5301 - .5303	10:07 NCR 430	05/01/96				
.5401 - .5403	10:07 NCR 430	05/01/96				
.5501 - .5503	10:07 NCR 430	05/01/96				
.5601 - .5603	10:07 NCR 430	05/01/96				
.5701 - .5703	10:07 NCR 430	05/01/96				
.5801 - .5804	10:07 NCR 430	05/01/96				
.5901 - .5903	10:07 NCR 430	05/01/96				
.6001 - .6003	10:07 NCR 430	05/01/96				
.6101 - .6103	10:07 NCR 430	05/01/96				
.6201 - .6202	10:07 NCR 430	05/01/96				
.6301 - .6303	10:07 NCR 430	05/01/96				
.6401 - .6403	10:07 NCR 430	05/01/96				
.6501 - .6503	10:07 NCR 430	05/01/96				
.6601 - .6603	10:07 NCR 430	05/01/96				
.6701 - .6702	10:07 NCR 430	05/01/96				
.6801 - .6802	10:07 NCR 430	05/01/96				
.6901 - .6903	10:07 NCR 430	05/01/96				
18A .0124 - .0128	10:07 NCR 430	05/01/96				
.0130	10:07 NCR 430	05/01/96				
.0132 - .0133	10:07 NCR 430	05/01/96				
.0135 - .0136	10:07 NCR 430	05/01/96				
18I .0114 - .0120	10:07 NCR 430	05/01/96				
18J .0110 - .0119	10:07 NCR 430	05/01/96				
.0212 - .0213	10:07 NCR 430	05/01/96				
.0304 - .0311	10:07 NCR 430	05/01/96				
.0507 - .0511	10:08 NCR 656	05/01/96				
.0601 - .0604	10:07 NCR 430	05/01/96				
.0701 - .0715	10:07 NCR 430	05/01/96				
.0801 - .0805	10:07 NCR 430	05/01/96				
.0803	10:02 NCR 118	07/01/95			07/01/95	
18K .0109 - .0116	10:07 NCR 430	05/01/96				
.0262 - .0263	10:08 NCR 656	05/01/96				
18L .0107 - .0108	10:07 NCR 430	05/01/96				
.0223 - .0224	10:07 NCR 430	05/01/96				
.0331 - .0336	10:07 NCR 430	05/01/96				
.0338 - .0339	10:07 NCR 430	05/01/96				
.0428 - .0434	10:07 NCR 430	05/01/96				
.0504	10:07 NCR 430	05/01/96				
.0511	10:07 NCR 430	05/01/96				
.0513	10:07 NCR 430	05/01/96				
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.0707	10:07 NCR 430	05/01/96				
.0801	10:07 NCR 430	05/01/96				
.0803 - .0809	10:07 NCR 430	05/01/96				
.0901 - .0904	10:07 NCR 430	05/01/96				
.1001 - .1006	10:07 NCR 430	05/01/96				
.1101 - .1103	10:07 NCR 430	05/01/96				
.1105 - .1107	10:07 NCR 430	05/01/96				
.1201	10:07 NCR 430	05/01/96				
.1203 - .1206	10:07 NCR 430	05/01/96				
.1301 - .1309	10:07 NCR 430	05/01/96				
.1401 - .1403	10:07 NCR 430	05/01/96				
.1501 - .1525	10:07 NCR 430	05/01/96				
18M .0107 - .0110	10:07 NCR 430	05/01/96				
.0206 - .0213	10:07 NCR 430	05/01/96				
.0304 - .0307	10:07 NCR 430	05/01/96				
.0406 - .0409	10:07 NCR 430	05/01/96				
.0505 - .0506	10:07 NCR 430	05/01/96				
.0607 - .0608	10:07 NCR 430	05/01/96				
.0701	10:07 NCR 430	05/01/96				
.0703 - .0706	10:07 NCR 430	05/01/96				
.0708 - .0714	10:07 NCR 430	05/01/96				
.0801 - .0803	10:07 NCR 430	05/01/96				
.0817 - .0819	10:07 NCR 430	05/01/96				
.0824 - .0838	10:07 NCR 430	05/01/96				
.0901 - .0908	10:07 NCR 430	05/01/96				
.1001 - .1009	10:07 NCR 430	05/01/96				
.1101 - .1106	10:07 NCR 430	05/01/96				
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.1401 - .1403	10:07 NCR 430	05/01/96				
.1405 - .1410	10:07 NCR 430	05/01/96				
18N .0105 - .0110	10:07 NCR 430	05/01/96				
.0204 - .0212	10:07 NCR 430	05/01/96				
.0305 - .0306	10:07 NCR 430	05/01/96				
.0601 - .0605	10:08 NCR 656	05/01/96				
.0701 - .0709	10:08 NCR 656	05/01/96				
18O .0517 - .0524	10:08 NCR 656	05/01/96				
18P .0901 - .0903	10:07 NCR 430	05/01/96				
.1001 - .1004	10:07 NCR 430	05/01/96				
18Q .0284	10:07 NCR 430	05/01/96				
.0286 - .0287	10:07 NCR 430	05/01/96				
.0520 - .0521	10:07 NCR 430	05/01/96				
.0538 - .0552	10:07 NCR 430	05/01/96				
26B .0110	10:08 NCR 660	10/01/95				
.0124	10:02 NCR 118	07/01/95	x		07/01/95	
26H .0302	10:04 NCR 228	08/01/95	x		08/01/95	
.0304 - .0305	10:04 NCR 228	08/01/95	x		08/01/95	
.0308 - .0309	10:04 NCR 228	08/01/95	x		08/01/95	
26H .0213	10:02 NCR 118	07/01/95			07/01/95	
39D .0302 - .0303	10:09 NCR 722	11/01/95				
41F .0706	10:03 NCR 196	08/01/95			08/01/95	
.0812	10:03 NCR 196	08/01/95			08/01/95	
42H .0911	10:09 NCR 722	12/01/95				
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11 NCAC 06A .0812	10:04 NCR 246	08/01/95			08/01/95	
<b>JUSTICE</b>						
12 NCAC 04E .0104	10:07 NCR 573	10/01/95				
07D .0201	10:07 NCR 575	10/01/95				
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.0801	10:07 NCR 575	10/01/95				
.0806	10:07 NCR 575	10/01/95				
.0902	10:07 NCR 575	10/01/95				
.0904	10:07 NCR 575	10/01/95				
09A .0204	10:02 NCR 122	08/01/95			08/01/95	
09B .0113	10:02 NCR 122	08/01/95			08/01/95	
.0201 - .0202	10:02 NCR 122	08/01/95			01/01/96	
.0205	10:02 NCR 122	08/01/95				
.0206	10:02 NCR 122	08/01/95			08/01/95	
.0210	10:02 NCR 122	08/01/95			08/01/95	
.0212 - .0214	10:02 NCR 122	08/01/95			08/01/95	
.0226 - .0228	10:02 NCR 122	08/01/95			08/01/95	
.0232 - .0233	10:02 NCR 122	08/01/95			08/01/95	
09C .0401	10:02 NCR 122	08/01/95			08/01/95	
.0601	10:02 NCR 122	08/01/95			08/01/95	
09D .0102	10:02 NCR 122	08/01/95			08/01/95	
.0104 - .0106	10:02 NCR 122	08/01/95			08/01/95	
10B .0102 - .0103	10:09 NCR 723	01/01/96				
.0105	10:09 NCR 723	01/01/96				
.0204	10:09 NCR 723	01/01/96				
.0301	10:09 NCR 723	01/01/96				
.0304	10:09 NCR 723	01/01/96				
.0307	10:09 NCR 723	01/01/96				
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.0407 - .0409	10:09 NCR 723	01/01/96				
.0502 - .0503	10:09 NCR 723	01/01/96				
.0505	10:09 NCR 723	01/01/96				
.0601 - .0607	10:09 NCR 723	01/01/96				
.0702 - .0706	10:09 NCR 723	01/01/96				
.0801 - .0803	10:09 NCR 723	01/01/96				
.0901	10:09 NCR 723	01/01/96				
.0903 - .0906	10:09 NCR 723	01/01/96				
.0908 - .0912	10:09 NCR 723	01/01/96				
.1004 - .1005	10:09 NCR 723	01/01/96				
.1201 - .1205	10:09 NCR 723	01/01/96				
11 .0210	10:05 NCR 301	09/01/95				
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13 NCAC	10:01 NCR 10	01/01/96				Notice on Subject Matter
	10:01 NCR 12	01/01/96				Notice on Subject Matter
	10:02 NCR 149	10/01/95				Notice on Subject Matter
	10:02 NCR 149	01/01/96				Notice on Subject Matter
	10:02 NCR 149	01/01/96				Notice on Subject Matter
	10:02 NCR 149	02/01/96				Notice on Subject Matter
	10:03 NCR 196	01/01/96				Notice on Subject Matter
	10:03 NCR 197	01/01/96				Notice on Subject Matter
12 .0101	10:02 NCR 142	08/01/95				
.0303 - .0315	10:02 NCR 142	08/01/95				
.0501 - .0502	10:02 NCR 142	08/01/95				
.0803 - .0808	10:02 NCR 142	08/01/95				
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	10:04 NCR 272					Rules Filed 04/95
	10:06 NCR 392					Rules Filed 05/95
	10:09 NCR 783					Rules Filed 06/95
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.0601	10:02 NCR 151	07/01/95				
.0602	10:02 NCR 151	07/01/96				
.0801	10:02 NCR 151	07/01/96				
.1001	10:02 NCR 151	07/01/96				
321 .0003 - .0004	10:02 NCR 151	07/01/95				
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21 NCAC 37 .0101	10:04 NCR 262	08/01/95			08/01/95	
.0302	10:03 NCR 206	08/01/95				
.0404	10:03 NCR 206	08/01/95				
.0502	10:03 NCR 206	08/01/95			08/01/95	
.0603	10:03 NCR 206	08/01/95			08/01/95	
.0904	10:04 NCR 262	08/01/95				
.0912	10:03 NCR 206	08/01/95			08/01/95	
.0914	10:03 NCR 206	08/01/95				
<b>PHYSICAL THERAPY EXAMINERS</b>						
21 NCAC 48C .0103	10:08 NCR 671	10/01/95				
48D .0006	10:08 NCR 671	10/01/95				
.0008	10:08 NCR 671	10/01/95				
.0011	10:08 NCR 671	10/01/95				
48E .0110	10:08 NCR 671	10/01/95				
48F .0002	10:08 NCR 671	10/01/95				
48G .0501 - .0516	10:08 NCR 671	10/01/95				
.0601	10:08 NCR 671	10/01/95				
48H .0104	10:08 NCR 671	10/01/95				
.0701 - .0704	10:08 NCR 671	10/01/95				
<b>PLUMBING, HEATING &amp; FIRE SPRINKLER CONTRACTORS</b>						
21 NCAC 50 .0402	10:01 NCR 39	09/01/95				
.0505	10:01 NCR 39	09/01/95				
<b>PROFESSIONAL COUNSELORS</b>						
21 NCAC 53 .0204 - .0211	10:01 NCR 40	07/01/95			07/01/95	
.0301	10:01 NCR 40	07/01/95			07/01/95	
.0305 - .0309	10:01 NCR 40	07/01/95			07/01/95	
.0310	10:01 NCR 40	07/01/95				
.0403 - .0405	10:01 NCR 40	07/01/95			07/01/95	
.0601 - .0604	10:01 NCR 40	07/01/95			07/01/95	
<b>PUBLIC EDUCATION</b>						
16 NCAC 06D .0106	10:07 NCR 584	11/01/95				
<b>REAL ESTATE COMMISSION</b>						
21 NCAC 58A .0110	10:02 NCR 157	07/01/95			07/01/95	
.0403	10:04 NCR 263	08/01/95			08/01/95	
.0503	10:04 NCR 263	08/01/95			08/01/95	
.0504 - .0506	10:02 NCR 157	07/01/95			07/01/95	
.0505	10:04 NCR 263	08/01/95			08/01/95	
.1703	10:02 NCR 157	07/01/95			07/01/95	
.1707 - .1708	10:02 NCR 157	07/01/95			07/01/95	
.1710 - .1711	10:02 NCR 157	07/01/95			07/01/95	
58E .0103	10:02 NCR 157	07/01/95			07/01/95	
.0203 - .0204	10:02 NCR 157	07/01/95			07/01/95	
.0303 - .0305	10:02 NCR 157	07/01/95			07/01/95	
.0406 - .0407	10:02 NCR 157	07/01/95			07/01/95	
.0506	10:02 NCR 157	07/01/95			07/01/95	
.0515	10:02 NCR 157	07/01/95			07/01/95	

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Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
			State	Local		

**REFRIGERATION EXAMINERS**

21 NCAC 60 .0102	10:04 NCR 264	08/01/95			08/01/95	
.0105	10:09 NCR 781	11/01/95				
.0204	10:04 NCR 264	08/01/95			08/01/95	
.0314	10:04 NCR 264	08/01/95			08/01/95	
.1102	10:04 NCR 264	08/01/95			08/01/95	
.1103	10:09 NCR 781	11/01/95				

**REVENUE**

Tax Review Board	10:01 NCR 03					
Tax Review Board	10:07 NCR 428					
Tax Review Board	10:09 NCR 716					

**SECRETARY OF STATE**

18 NCAC 06 .1205 - .1206	10:05 NCR 306	09/01/95				
.1208	10:05 NCR 306	09/01/95				
.1302 - .1305	10:05 NCR 306	09/01/95				
.1313	10:05 NCR 306	09/01/95				

**STATE PERSONNEL**

25 NCAC 01C .0207	10:04 NCR 264	08/01/95				
.0402 - .0408	10:04 NCR 264	08/01/95				
01D .0201	10:04 NCR 264	08/01/95				
.0205	10:04 NCR 264	08/01/95				
.0207	10:04 NCR 264	08/01/95				
.0211	10:04 NCR 264	08/01/95				
.0509	10:07 NCR 588	10/01/95				
.0808	10:04 NCR 264	08/01/95				
.1001	10:04 NCR 264	08/01/95				
.1009	10:04 NCR 264	08/01/95				
.1201	10:04 NCR 264	08/01/95				
.1204	10:04 NCR 264	08/01/95				
.1401	10:04 NCR 264	08/01/95				
.1801 - .1802	10:04 NCR 264	08/01/95				
.2001	10:04 NCR 264	08/01/95				
01E .0804	10:04 NCR 264	08/01/95				
.1402 - .1409	10:07 NCR 588	10/01/95				
.1410 - .1411	10:07 NCR 588	10/01/95				
01J .0604 - .0606	10:07 NCR 588	10/01/95				
.0608	10:07 NCR 588	10/01/95				
.0610 - .0612	10:07 NCR 588	10/01/95				
.0613 - .0615	10:07 NCR 588	10/01/95				
01K .0312	10:04 NCR 264	08/01/95				

**TRANSPORTATION**

19A NCAC 02D .0801	10:04 NCR 254	09/01/95				
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# BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
<b>Title 1 - Dept. of Administration - Full Title</b>	<b>201 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Division of Purchase & Contract	201 10 05	\$21.00	\$30.00
Federal Block Grant Funds	201 10 33	\$17.50	\$25.00
<b>Title 2 - Dept. of Agriculture - Full Title</b>	<b>202 00 00</b>	<b>\$98.00</b>	<b>\$140.00</b>
Food & Drug Protection Division	202 15 09	\$28.00	\$40.00
Structural Pest Control Committee	202 15 34	\$21.00	\$30.00
Agricultural Markets	202 15 43	\$21.00	\$30.00
Plant Industry	202 15 48	\$21.00	\$30.00
Animal Industry	202 15 52	\$21.00	\$30.00
<b>Title 3 - Dept. of State Auditor - Full Title</b>	<b>203 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 4 - Dept. of Commerce - Full Title</b>	<b>204 00 00</b>	<b>\$87.50</b>	<b>\$125.00</b>
Alcoholic Beverage Control Commission	204 15 02	\$12.00	\$40.00
Banking Commission	204 15 03	\$24.50	\$35.00
Credit Union Division	204 15 06	\$14.00	\$20.00
Savings & Loan Division	204 15 09	\$14.00	\$20.00
Industrial Commission/Workers Compensation	204 15 10	\$14.00	\$20.00
Savings Institutions Division	204 15 16	\$24.50	\$35.00
<b>Title 5 - Dept. of Corrections - Full Title</b>	<b>205 00 00</b>	<b>\$56.00</b>	<b>\$80.00</b>
Division of Prisons	205 15 02	\$24.50	\$35.00
<b>Title 6 - Council of State - Full Title</b>	<b>206 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
<b>Title 7 - Dept. of Cultural Resources - Full Title</b>	<b>207 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
<b>Title 8 - State Board of Elections - Full Title</b>	<b>208 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 9 - Offices of the Governor &amp; Lt. Governor - Full Title</b>	<b>209 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
<b>Title 10 - Dept. of Human Resources - Full Title</b>	<b>210 00 00</b>	<b>\$346.50</b>	<b>\$495.00</b>
Licensing of Health Facilities	210 20 10	\$45.50	\$65.00
Detention Facilities	210 20 20	\$31.50	\$45.00
Mental Health & Rehabilitation Services	210 20 30	\$77.00	\$110.00
Social Services	210 20 40	\$119.00	\$170.00
Children Services/Day Care	210 20 41	\$31.50	\$45.00
Services for the Aging	210 20 42	\$31.50	\$45.00
Services for the Blind	210 20 43	\$28.00	\$40.00
Services for the Deaf & Hard of Hearing	210 20 44	\$17.50	\$25.00
Employment Opportunities	210 20 45	\$35.00	\$50.00
<b>Title 11 - Dept. of Insurance - Full Title</b>	<b>211 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Insurance	211 10 01	\$56.00	\$80.00
Consumer Services	211 10 04	\$24.50	\$35.00
Fire & Rescue Services	211 10 05	\$17.50	\$25.00
Agent Services	211 10 06	\$28.00	\$40.00
Engineering & Building Codes	211 10 08	\$21.00	\$30.00
<b>Title 12 - Dept. of Justice - Full Title</b>	<b>212 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Private Protective Services	212 10 07	\$21.00	\$30.00
Police & Sheriff's Education & Training Standards	212 10 09	\$31.50	\$45.00
NC Alarm Systems Licensing Board	212 10 11	\$17.50	\$25.00
<b>Title 13 - Dept. of Labor - Full Title</b>	<b>213 00 00</b>	<b>\$77.00</b>	<b>\$110.00</b>
Mine & Quarry Safety	213 15 06	\$14.00	\$20.00
General Safety/OSHA	213 20 00	\$31.50	\$45.00
Wage & Hour Rules	213 15 12	\$14.00	\$20.00
Boiler & Pressure Vessel Safety	213 15 13	\$14.00	\$20.00
Apprenticeship & Training	213 15 14	\$14.00	\$20.00
Elevator & Amusement Device Safety	213 15 15	\$14.00	\$20.00
<b>Title 14A - Dept. of Crime Control &amp; Public Safety - Full Title</b>	<b>214 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
Alcohol Law Enforcement	214 00 08	\$17.50	\$25.00
Victims Compensation Fund	214 00 11	\$14.00	\$20.00
<b>Title 15A - Dept. of Environ., Health, &amp; Nat. Resources - Full Title</b>	<b>215 00 00</b>	<b>\$276.50</b>	<b>\$395.00</b>
Environmental Management	215 15 00	\$115.50	\$165.00
Air Quality	215 15 10	\$49.00	\$70.00
Water Quality	215 15 20	\$49.00	\$70.00
Land & Waste Management	215 15 30	\$56.00	\$80.00
Solid Waste Management	215 15 31	\$35.00	\$50.00
Underground Storage Tanks	215 15 32	\$17.50	\$25.00

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Coastal Management	215 15 40	\$31.50	\$45.00
Environmental Health	215 25 00	\$105.00	\$150.00
Radiation/Nuclear Waste	215 25 10	\$42.00	\$60.00
Sanitation	215 25 20	\$35.00	\$50.00
Public Health	215 25 30	\$59.50	\$85.00
Intoxilizer & Breathalyzer	215 25 31	\$17.50	\$25.00
<b>Title 16 - Dept. of Public Instruction - Full Title</b>	<b>216 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
Elementary & Secondary Education	216 10 06	\$21.00	\$30.00
<b>Title 17 - Dept. of Revenue - Full Title</b>	<b>217 00 00</b>	<b>\$91.00</b>	<b>\$130.00</b>
Taxes on Individuals	217 15 10	\$31.50	\$45.00
Taxes on Business	217 15 20	\$56.00	\$80.00
Sales & Use Tax Division	217 15 27	\$31.50	\$45.00
Motor Fuels Tax Division	217 15 29	\$21.00	\$30.00
<b>Title 18 - Secretary of State - Full Title</b>	<b>218 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
Securities Division	218 10 06	\$21.00	\$30.00
<b>Title 19A - Dept. of Transportation - Full Title</b>	<b>219 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Division of Highways	219 10 02	\$28.00	\$40.00
Division of Motor Vehicles	219 10 03	\$35.00	\$50.00
<b>Title 20 - Dept. of the State Treasurer - Full Title</b>	<b>220 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
<b>Title 21 - Occupational Licensing Boards - Full Title</b>	<b>221 00 00</b>	<b>\$143.50</b>	<b>\$205.00</b>
<b>Title 22 - Administrative Procedures Act - Repealed</b>	<b>222 00 00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Title 23 - Dept. of Community Colleges - Full Title</b>	<b>223 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 24 - Independent Agencies - Full Title</b>	<b>224 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 25 - Office of State Personnel - Full Title</b>	<b>225 00 00</b>	<b>\$42.00</b>	<b>\$60.00</b>
<b>Title 26 - Office of Administrative Hearings - Full Title</b>	<b>226 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 27 - North Carolina State Bar - Full Title</b>	<b>227 00 00</b>	<b>\$42.00</b>	<b>\$60.00</b>
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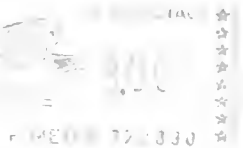
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